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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge
Honorable Daniel D. Hall, Trial Court Judge

EZRA RYSUNN WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001145

BRIEF OF PETITIONER PURSUANT TO *WHITE V. STATE*

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ISSUES PRESENTED

I.

Whether the trial court erred by admitting two recorded jails calls between petitioner and Martha Everett because the calls were not properly authenticated and were obtained in violation of petitioner's privacy rights?

II.

Whether the trial court erred by refusing to exclude detective Barton's testimony concerning petitioner's arrest and his reasons for seeking arrest warrants for petitioner because it was irrelevant, cumulative, and, in effect, allowed the state to present a second closing argument?

STATEMENT

The November 27, 2012, term of the Anderson County grand jury indicted petitioner for murder, armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. App. 759-764. On August 10, 2015, petitioner proceeded to a jury trial before the Honorable R. Lawton McIntosh. App. 1. Scott D. Robinson represented petitioner. App. 1. Rame Lambert-Campbell and Brantley Haigler prosecuted the case for the state. App. 1. The jury acquitted petitioner of the murder charge but found him guilty as indicted for the remaining charges. App. 478, l. 9 – 479, l. 12. Judge McIntosh imposed a total sentence of 55 years comprised of a 30-year sentence as to the armed robbery charge, a consecutive 25-year sentence for the kidnapping charge, and a concurrent 5-year sentence for the weapons charge. App. 489, ll. 13-22. Petitioner filed a timely notice of appeal, however, on October 14, 2016, the appeal was ultimately dismissed by the South Carolina Court of Appeals because trial counsel failed to provide proof that the transcript had been delivered, as required by Rule 207, SCACR. App. 491-504.

At a subsequent PCR evidentiary hearing, the state conceded that petitioner is entitled to a belated appeal pursuant, and the PCR court ruled he was entitled to that appeal under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). App. 679-758. Pursuant to Rule 243(i), SCACR, petitioner then filed his petition for a writ of certiorari and this brief.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Hatcher,* 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan,* 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*; *see also State v. Brockmeyer*, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENTS

I.

The trial court erred by admitting two recorded jails calls between petitioner and Martha Everett because the calls were not properly authenticated and were obtained in violation of petitioner's privacy rights.

Relevant facts

Trial

During petitioner's trial, the state argued that petitioner and several co-defendants were involved in the kidnapping, armed robbery, and subsequent death of C.J. Patel. The state presented evidence that petitioner's girlfriend and co-defendant Kyndra Howell told law enforcement that Patel called her the day he went missing and offered her money to have sexual intercourse with him. App. 102, ll. 2-14. Law enforcement located Patel's vehicle on July 2, 2012, in a heavily wooded area but could not locate Patel. App. 105, l. 9 – 106, l. 20. Patel's body was discovered on July 11, 2012, in a heavily wooded area because co-defendant Zachary Gantt took law enforcement to the body. App. 111, ll. 15-24. Gantt testified and named three people that were involved in the in the robbery, kidnapping, and ultimate murder of Patel: Howell, Jeremiah Johnson,[1] and petitioner.[2] App. 118, ll. 19-24. He explained that the plan to rob Patel was Howell's. App. 167, ll. 11-17. He then testified that petitioner arrived at Howell's house when Patel was already being held, and petitioner saw Patel with his hands tied behind his back. App. 127, l. 22 – 132, l. 6; 134, ll. 2-20. Gantt further testified that petitioner's involvement included beating Patel's head, sticking a heated knife in his stomach, using bug

[1] Johnson went by "Munn" or "Tree." App. 119, l. 24 – 120, l. 5.

[2] Petitioner's street name or nickname was "Quavo." App. 120, ll. 13-15.

spray on Patel, taking him into a heavily wooded area and ultimately shooting him in the head. App. 135, l. 14 – 136, l. 13; 142, ll. 18-24; 145, ll. 10-15.

Objection to jail calls

Then, petitioner challenged the introduction of two jail calls. App. 214, ll. 15-18. He raised on objection to foundation and hearsay and cited South Carolina Rules of Evidence "602 and 601, also the hearsay Rule as well." App. 215, ll. 14-17. He also raised an objection under Rule 701, SCRE, because the witness the jail calls would be entered through was a lay witness. App. 215, ll. 19-25. The trial court raised Rule 802, SCRE, noting that its understanding was that the telephone conversations were recorded conversations that petitioner allegedly had. App. 216, ll. 1-8. Petitioner argued that the officer would be testifying that petitioner was the person on the phone and that the records were kept in the scope of business. App. 216, l. 16 – 217, l. 2. The trial court inquired of trial counsel that, assuming proper authentication could be made under Rule 801(d), SCRE, would the jail provide those statements not as hearsay but rather as admissions by the petitioner. App. 217, ll. 3-8. Trial counsel responded that for Rule 801(d) to apply, the state had to establish that the recording was authentic and that the voice on the call was petitioners. App. 217, ll. 16-20.

As to foundation, trial counsel argued that he had no ability to cross-examine whether the system was working properly or if there were any flaws in the system. App. 218, ll. 1-12. He contended that the state would not call a witness who could testify that the system was without flaw. App. 218, ll. 13-18. He argued that the only witness the state had left to call, Detective Barton, could not give the proper foundation. App. 218, ll. 19-20; 219, ll. 2-8. The trial court inquired whether counsel had any question as to whether the jail calls were not the original, citing to Rules 1001, 1002, and 1003, SCRE. App. 219, ll. 9-18. The court also stated that it

appeared, under Rule 2003, SCRE, that business records were admissible as the original unless there was a genuine issue as to authenticity or circumstances where it would be unfair to admit copies in lieu of the originals. App. 219, ll. 17-23. Trial counsel responded that "the point that I make is that while it is speculation, the State is putting it forth through the officer" and clarified that was his objection. App. 220, ll. 20-23. Trial counsel explained that, at the time Barton listened to the recording, he had never met petitioner. App. 220, l. 24 – 221, l. 2. The court noted that the foundational objection "remains to be seen" but denied the hearsay objection because it was not hearsay to the extent that it contained prior statements or admissions of the petitioner. App. 221, ll. 7-13. The court advised trial counsel to reiterate his objections at the proper time. App. 221, ll. 19-24. Trial counsel then requested a foundational proffer, which the state did not object to. App. 222, ll. 1-19.

Foundation proffer

Detective Barton testified that before this case, he did not have any dealings with petitioner. App. 223, ll. 3-8. He explained that there was "no training on how to operate the system on how we retrieve phone calls." App. 223, ll. 13-15. Barton explained that each inmate was assigned a PIN to make a phone call, and the inmate would say their name so the person receiving the call could accept the call. App. 223, l. 15 – 224, l. 1.

Barton's trial testimony

As relevant, the state elicited Barton's involvement with the detention center. App. 310, ll. 9-11. Barton testified that he had previously worked at the detention center and knew how their phone system worked. App. 310, ll. 9-22. He confirmed that the phone system tells the caller that the phone call is being recorded, and that the person does not have to give their real name on the call. App. 311, ll. 18-22. He explained that each inmate is assigned a PIN, which is

entered each time a phone call is made. App. 312, ll. 1-10. Barton testified that as a detective he had the ability to listen to the phone calls and reiterated that the phone calls are recorded. App. 312, ll. 11-21. He also testified that there was a sign posted that calls were recorded. App. 312, ll. 21-25. The state then inquired of Barton, "[s]o regarding privacy, the inmate doesn't have the right to a private phone call to just another individual, from the phone?" App. 313, ll. 3-6. Trial counsel objected to calling for a legal conclusion which the court overruled. App. 313, ll. 7-9.

Barton then explained that the timeframe he listened to the jails calls was not long, and he began listening to the calls once Gantt and Howell went to jail — both of whom were contacted by petitioner when they first went to jail. App. 313, ll. 16-24. He testified that he listened to calls, saved them, and made a copy of the calls. App. 314, ll. 1-13. He testified that the system was operating correctly and properly. App. 314, ll. 23-25. The state showed Barton State's Exhibit 40, which were the two jail calls. App. 315, ll. 1-19. Trial counsel made a foundation objection which the trial court overruled. App. 315, ll. 20-22. Barton explained that the two jail calls pertained to the case as an alibi. App. 316, ll. 9-14. The state entered the jail calls into evidence, and trial counsel made the "[s]ame objection previously made." App. 316, l. 19 – 317, l. 2.

Barton then testified that when he listened to the calls, he was able to identify petitioner's voice from the information that was put into the computer. App. 320, ll. 12-15. Trial counsel made a hearsay objection which was overruled. App. 320, ll. 16-18. Barton attempted to testify that other detectives familiar with petitioner's voice identified him, but the court sustained a hearsay objection. App. 320, l. 19 – 321, l. 1. Barton then testified that the phone calls were made to Martha Everett who was petitioner's "baby's mother." App. 321, ll. 6-12. Barton reaffirmed he was able to determine it was petitioner's voice on the recording. App. 321, ll. 13-

15. The recordings were from July 24, 2012, and July 29, 2012. App. 321, ll. 16-19. The state played the two recordings for the jury over defense objection. App. 321, ll. 20-24.

Jail call recordings

The July 24, 2012, jail call was between petitioner and Everett. State's Exhibit 40. The call began by stating that it was recorded, subject to monitoring at any time, and asked for a PIN. State's Exhibit 40; 2:23:33 – 2:23:4. Petitioner can be heard telling Everett "You my alibi," "you're going to have to get as many as possible neighbors," "you know I was at the house," "we need as many people as possible to vouch about that," and "we are gonna have to get me some alibis." State's Exhibit 40; 2:27:56 – 2:28:49. He also stated that "they need to know that I was not around." State's Exhibit 40; 2:28:53 – 2:28:57. Everett confirmed that she would talk to everyone. State's Exhibit 40; 2:29:17 – 2:29:43, 2:32:36 – 2:32:37.

The July 29, 2012, jail call was also between petitioner and Everett. State's Exhibit 40. Everett informed petitioner that "nobody's willing to do it." State's Exhibit 40; 2:27:07 – 2:27:11. She also explained that she did not think that an individual named Deac would do it. State's Exhibit 40; 2:27:25 – 2:27:29. Petitioner became upset. State's Exhibit 40; 2:27:30 – 2:29:24. He explained to Everett that he needed "this done ASAP." State's Exhibit 40; 2:32:02 – 2:32:06. He asked Everett to tell Deac this was messed up and that all he needed to know what that he did not do it. State's Exhibit 40; 2:33:16 – 2:33:27, 2:35:09 – 2:35:40. He continued to talk about Deac helping and became frustrated that Everett relayed that Deac did not think he was being told everything. State's Exhibit 40; 2:35:40 – 2:37:30. Petitioner stated that "of course I am not telling him everything," but that what was important was that he "wasn't there." State's Exhibit 40; 2:38:34 – 2:39:10.

Barton's continued trial testimony

The next day, Barton continued his trial testimony. App. 333, ll. 10-16. He explained that what he took from the two phone calls was that Everett would be petitioner's alibi. App. 334, l. 23 – 335, l. 1. He and another sergeant went to see Everett to get a statement from her. App. 335, ll. 2-12. He spoke with Everett and stated that because they knew petitioner's cellphone had been pinging off Homeland Park cell towers, which was not the area Everett resided, they were not able to substantiate anything Everett told them. App. 336, ll. 1-10. He explained that Everett would not put anything in writing and asked law enforcement to leave her residence. App. 336, ll. 10-13. He testified that Everett did not provide an alibi for petitioner, and no other individual had come forward with an alibi. App. 336, ll. 13-21.

After Barton's testimony concluded, the state rested its case. App. 376, l. 1. Trial counsel moved for a directed verdict on all charges, which the court denied, and trial counsel rested petitioner's case. App. 376, ll. 12-19; 378, ll. 1-5.

State's closing argument

During its closing argument, the state argued that the two jail calls were significant and went to alibi. App. 430, ll. 9-13. The state quoted petitioner's words, "get me some alibi," and argued you do not need a timeline if you are innocent. App. 430, ll. 14-17. The state argued that he was trying to make things up and trying to get "his baby mama on the outside to create him an alibi to explain where he was." App. 430, ll. 18-22. For the second phone call, the state pointed out that Everett told petitioner no one wanted to get involved and argued that no one else wanted to come in and lie because they did not believe him. App. 431, ll. 11-19. It argued that petitioner's personality was evident from the calls and characterized them as "profanity laced." App. 431, l. 24 – 432, l.15.

Jury deliberations, verdict, and sentencing

During deliberations, the jury sent a note requesting to rehear the jail phone calls. App. 448, ll. 20-25. The court confirmed with the jury that it wanted to "listen to the two recorded jail phone calls that the Defendant supposedly made to Martha Everett." App. 450, ll. 5-8. The forelady confirmed that was correct. App. 450, l. 9. The court played State's Exhibit 40 (DVD of Jail Phone Calls) (on file with this Court), the two recorded jail calls, for the jury. App. 450, ll. 17-24.

The jury also sent a note asking what to do if they were unable to reach a verdict. App. 451, ll. 8-14. The court asked the forelady if the jury was hopelessly deadlocked, and the forelady responded, "I really don't know." App. 452, l. 17 – 453, l. 13. The court determined that an *Allen*[3] charge was appropriate, and the parties agreed. App. 453, ll. 18-24. The court gave the jury an *Allen* charge. App. 454, l. 1 – 456, l. 20. Approximately an hour later, the jury sent another note explaining that they were confused if they could "go with our gut" and requested another explanation on how to view circumstantial evidence. App. 457, ll. 5 – 13. The court recharged the jury with its general charge and on the jury's consideration for deliberations. App. 461, l. 3 – 477, l. 2. The jury returned to its deliberations and returned with a verdict of not guilty as to murder and a guilty verdict as to the remaining charges. App. 478, l. 9 – 479, l. 12.

The court imposed a total sentence of 55 years comprised of a 30-year sentence as to the armed robbery charge, a consecutive 25-year sentence for the kidnapping charge, and a concurrent 5-year sentence for the weapons charge. App. 489, ll. 13-22.

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[3] *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

Discussion

The trial court erred by refusing to exclude two recorded jails calls between petitioner and Martha Everett because the state failed to properly authenticate the calls, and they were obtained in violation of the Fourth Amendment. Therefore, this Court should reverse.

a. Lack of foundation for admission of jail calls

In petitioner's case, the two recorded jail calls that were admitted into evidence over trial counsel's objection were not properly authenticated by the state. App. 321, ll. 20-24; State's Exhibit 40.

Generally, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims." Rule 901(a), SCRE. Moreover, voice identification may be shown "whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." Rule 901(a)(5), SCRE.

As trial counsel argued below, the state presented neither the records custodian nor a person that ran telecommunication for the jail. App. 218, ll. 1-12. Instead, the state entered the jail calls through Detective Barton, the lead detective. App. 225, ll. 19-23. Although Barton testified that he had previously worked at the detention system, knew how the phone system worked, and explained the PIN system, he was not the individual who ran the phone system, he did not offer testimony as to how or if jail calls were stored in the normal course of business, and, at the time he listened to the recording, he had never met the petitioner. App. 223, ll. 3-8;

310, ll. 9-22; 312, ll. 1-10; 321, ll. 13-15.[4] It does not appear that our courts have addressed whether a detective's testimony alone is sufficient to meet the foundational requirements for admitting a recorded call.

In the instant case, the state did not present an adequate foundation to establish the authenticity of the two recorded jail calls. Particularly, the state did not provide any testimony from any individual in charge of maintaining the jail's recording system. *See generally* App. 223-224; 310-321. Barton's testimony likewise falls short of properly authenticating the two recorded jail calls. While Barton testified that each inmate receives a unique PIN which must be entered to make a call, his explanation of the PIN system alone does nothing to establish how the system records the calls, if it does so accurately, or to demonstrate that the recordings were not altered. App. 311, l. 5 – 312, l. 7. Without more, there remains a question as to whether the calls

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[4] Other jurisdictions have addressed the adequacy of the foundation the state provided to establish the authenticity of the jail's recordings of phone calls. *See State v. Coston*, 215 A.3d 1285, 1287-88 (Me. 2019) (determining that testimony from the Penobscot County jail administrator and a Dexter police officer to provide the means by which the jail's phone calls were recorded, preserved, and retrieved was sufficient to support the court's conclusion that the necessary foundation had been established); *Blash v. State*, 318 Ga. 325, 335, 898 S.E.2d 522, 533-34 (Ga. 2024) (concluding that testimony from an employee of the Dodge County Sheriff's office that her job duties included listening to jail calls; that an automated system recorded all jail calls and stored them on a server for four years; that the system accurately recorded the calls at issue when made; and that no one altered the recordings, reliably tended to show the contents of the call were placed by appellant and the trial court properly admitted them); *Asencio v. State*, 244 So.3d 294 (Fla. Dist. Ct. App. Fourth District 2018) (explaining that the trial court did not abuse its discretion by admitting the jail calls because the records custodian thoroughly explained how the system used the inmate's booking number, PIN, and voice recognition software to identify the individual placing the call); *People v. Jackson*, 225 A.D.3d 1136, 207 N.Y.S.3d 294 (N.Y. App. Div. 2024) (determining that identity on the jail calls was established "through the content of the recordings and the testimony of a police detective familiar with defendant's voice, and the testimony of individuals in charge of maintaining the jail's recording systems established that the recordings were 'complete and accurate reproduction[s] of the conversation[s] and [had] not been altered'"); *State v. Stephen*, 264 N.E.3d 942 (Ct. App. Ohio 2025) (determining that jail calls were properly authenticated where a corrections officer at the jail testified appellant's PIN was used to place the calls, and he had stated his name and the United States of America to place a call).

were accurately recorded, stored, and remained free from tampering. These gaps in testimony are of heightened importance where, as here, the witness the state presented to authenticate the jail calls could not be cross-examined on whether the jail call system was functioning properly or without flaw because detective Barton was not the individual who maintained the system.

The trial court also erred when it denied petitioner's several objections to the state's inability to establish the proper foundation for the jail calls, without explanation, because Barton could not properly identify petitioner's voice. App. 315, ll. 20-22; 320, ll. 16-18. While the requirement for a voice identification is relatively low, it is important to note that the record indicates that Barton's familiarity with petitioner's voice stemmed from other detectives[5] who were familiar with Barton and information that was put into the computer. App. 320, ll. 12-15; 320, l. 19 – 321, l. 1. Barton also explained that before testifying, he did not have any dealings with petitioner. App. 223, ll. 3-8. Thus, the state did not lay the proper foundation to establish that Barton had heard petitioner's voice such that he could give an opinion that it was petitioner's voice on the recorded jail calls. Rule 901(a)(5), SCRE.

Therefore, the trial court abused its discretion by admitting the two recorded jail calls because the state failed to lay the proper foundation to establish the authenticity of the calls.

b. Violation of petitioner's right against unreasonable searches and seizures

The trial court also erred by refusing to exclude the two recorded jail calls because they violated his privacy rights under the United States and South Carolina Constitution as petitioner had a reasonable expectation of privacy in using the jail telephones and making phone calls. App. 313, ll. 3-9.

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[5] The trial court sustained a hearsay objection to this testimony. App. 320, l. 19 – 321, l. 1.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . ." U.S. Const. amend. IV. The South Carolina Constitution also prohibits unreasonable searches and seizures and additionally includes an express protection of the right to privacy. "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 (emphasis added).

In *State v. Forrester*, 343 S.C. 637, 643–44, 541 S.E.2d 837, 840 (2001), the South Carolina Supreme Court wrote:

> The relationship between the two constitutions is significant because "[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." *State v. Easler,* 327 S.C. 121, 131 n. 13, 489 S.E.2d 617, 625 n. 13 (1997); *see also State v. Austin,* 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991). Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights. *Id.* This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling. *See Segura v. Texas*, 826 S.W.2d 178, 182 (Tex. App. 1992). Thus, this Court can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution.

In *State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976), the South Carolina Supreme Court reversed the conviction finding the admission of incriminating letters written by a pre-trial detainee and obtained by a detective not affiliated with the jail should have been excluded as a product of an illegal search and seizure. In *Ellefson*, the Court wrote:

> When a pretrial detainee remains in custody, he is not disrobed of his constitutional rights and laid bare for the zealous investigation of his case. He is cloaked with the presumption of innocence. His rights are curtailed only to the extent 'justified by the considerations underlying our penal system.' *Price v. Johnston*, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948). Even a convicted prisoner does not shed basic constitutional rights at the prison gate. Rather, he 'retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law.' *Coffin v. Reichard*, 143 F.2d 443, 445 (6th Cir. 1944), *Procunier v. Martinez*, supra, Marshall concurring page 1816.

266 S.C. at 500, 224 S.E.2d at 669.

The jail calls in the instant case are analogous to the letters in *Ellefson*. While federal courts have found no expectation of privacy in jail calls,[6] this Court should find that petitioner had, at least, a diminished but reasonable expectation of privacy in the jail calls at issue based on the heightened protection of privacy found in the South Carolina Constitution and the holding in *Ellefson*. Detention centers can have a legitimate interest in monitoring detainee phone calls for security purposes. This interest, however, should not extend to the state conducting a fishing expedition of a defendant's phone calls prior to trial in the hopes of finding incriminating evidence.

As in *Ellefson*, the recorded calls were listened to and copied by a detective who was not affiliated with the jail. *Ellefson*, 266 S.C. at 494, 224 S.E.2d at 666; App. 314, ll. 1-13; 320, ll. 12-15; 312, ll. 11-21. The result is that the search of the calls, without prior approval by a judge, was *per se* unreasonable. *See Coolidge v. New Hampshire*, 403 U.S. 443, 454–55, 91 S.Ct. 2022, 2032, 29 L.Ed. 2d 564 (1971), *holding modified by Horton v. California*, 496 U.S. 128, 110 S. Ct. 2301, 110 L.Ed. 2d 112 (1990) ("Thus the most basic constitutional rule in this area is that

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[6] *United States v. Van Poyck*, 77 F.3d 285, 290–91 (9th Cir. 1996); *United States v. Clark*, 651 F. Supp. 76, 81 (M.D. Pa. 1986).

'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption * * * that the exigencies of the situation made that course imperative.' 'The burden is on those seeking the exemption to show the need for it.'"). The state did not seek a warrant to obtain petitioner's jail calls and likewise failed to show any exception to the warrant requirement, failed to show exigent circumstances, and failed to attempt to show the existence of probable cause to justify the search.

It appears that the state attempted to elicit testimony from Barton that petitioner consented to the recording and monitoring of his calls because the system advises inmates that their calls are recorded, and a sign is posted which alerts inmates to the recording. App. 312, l. 14 – 313, l. 2. The state also elicited from Barton testimony concerning petitioner's privacy expectations and inquired whether an "inmate [has] the right to a private phone call to another individual." App. 313, ll. 3-6. However, consent was addressed in *Ellefson*, where the pre-trial detainee signed a card when he was processed into the jail authorizing jail officials to read his mail. The Court wrote:

> If the State relies upon the consent to search, it has the burden of proving the voluntariness of the consent. *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968). The court thus cannot assume there was consent. *People v. Henry*, 65 Cal.2d 842, 56 Cal.Rptr. 485, 423 P.2d 557 (1967). For noncustodial searches, the current test is whether or not the consent was voluntary under the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). The skeletal details of the so called 'consent' belie it. If we were to hold the petitioner consented to waive his constitutional rights here, *the doctrine of consent would be effectively emasculated.*

Ellefson, 266 S.C. at 502–03, 224 S.E.2d at 670. (n. 4 omitted) (emphasis added). In the instant case, the recording prior to the jail calls that petitioner made is not sufficient for consent under the South Carolina Constitution. App. 311, ll. 18-22; 312, ll. 21-25; *see also* State's Exhibit 40 (DVD of Jail Phone Calls); 2:23:33 – 2:23:40. The recording is thus not sufficient as a waiver of constitutional rights because "[c]ourts employ a high bar when judging the waiver of constitutional rights." *See Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (noting that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."); *Grosshuesch v. Cramer*, 377 S.C. 12, 24, 659 S.E.2d 112, 118 (2008). It likewise cannot be said that petitioner's consent was voluntary as he had no viable alternative to the jail phones.

In addition, while other courts have held that a pre-trial detainee lacks a reasonable expectation of privacy in jail calls, the justification is primarily jail safety as a "legitimate security measure." *See, e.g.*, *State v. Brantley*, 321 Ga. 370, 374, 914 S.E.2d 807, 810 (Ga. 2025). Although jail safety may be a legitimate concern, this ignores the fact that a pre-trial detainee who wants to exercise one of several constitutional rights, including those so important as preparing his defense for trial,[7] has no real choice but to use the recorded jail telephone. Nor can the broad-sweeping concern of "jail safety" justify indiscriminate eavesdropping on the phone calls of pre-trial detainees by various investigators. App. 313, ll. 16-24; *See Ellefson*, 266 S.C. at 498, 224 S.E.2d at 668 ("The letters were obtained by...a detective who was not connected with the operation of the jail. His efforts were entirely investigatory and in pursuit of

[7] *Ellefson*, 266 S.C. at 501, 224 S.E.2d at 670 ("To allow an independent prosecution team the right to indiscriminately inspect letters written by the accused is to hack at the roots of any defense").

securing a conviction"); *see also People v. Diaz*, 33 N.Y.3d 92, 110, 122 N.E.3d 61, 73 (N.Y. 2019) (Wilson, J., dissenting ("It is simply implausible that the wholesale disclosure of phone call recordings to the District Attorney advances jail security")). To that end, the state did not elicit testimony from Detective Barton that petitioner engaged in any behavior that suggested to law enforcement there may be evidence of a crime to be found within his phone calls. Instead, the record indicates that detective Barton began listening to petitioner's jail calls because petitioner's co-defendants went to jail and were contacted by petitioner. App. 313, ll. 16-24. The result is that these recordings were not made based on any particularized suspicion, and the search of the contents of petitioner's calls was unlawful.

Even further, the jail calls at issue in this case played a significant role in petitioner's trial. For instance, the state elicited extensive testimony about the calls, including detective Barton's testimony regarding his interaction with Everett as a result of the calls. App. 334, l. 23 – 335, l. 12. Barton testified that when he spoke with Everett, he explained to her that petitioner's phone had been pinging off the Homeland Park towers which was not the area Everett resided in and that she ultimately did not provide a written statement. App. 336, ll. 1-12. The state also emphasized the contents of the jail calls during its closing argument, going so far as to argue that "you do not need a timeline if you are innocent." App. 430, ll. 14-17. Similarly, the state used the contents of the jail calls to characterize petitioner's personality. App. 431, l. 24 – 432, l. 15.

Accordingly, the trial court erred by admitting the two recorded jail calls at trial because the state failed to lay a sufficient foundation to authenticate the calls, and the calls were obtained in violation of petitioner's privacy rights under the Fourth Amendment.

II.

The trial court erred by refusing to exclude detective Barton's testimony concerning petitioner's arrest and his reasons for seeking arrest warrants for petitioner because it was irrelevant, cumulative, and, in effect, allowed the state to present a second closing argument.

Relevant facts

Trial

During petitioner's trial, the state called co-defendant Gantt's mother, Kizzie Roebuck, who testified to the following. App. 172, l. 17 – 173, l. 13. She told her son to turn himself in. App. 174, l. 1. She spoke with petitioner after her son was arrested, and she let him know the police were looking for him. App. 175, l. 20 – 176, l. 3. She explained that when she spoke with petitioner, he was getting out of a gold car and had a gun wrapped in a shirt. App. 176, ll. 4-9.

Jonathan Johnson, who had the nickname "Bug" or "B.J.," testified that he went to the incident location on Terry Drive looking for drugs. App. 182, l. 20 – 183, l. 1; 184, ll. 20-24. He explained that someone he did not know the name of opened the door and told him there were not any drugs, and he left. App. 183, ll. 22-24. He testified that he did not know the man's name, and "still to this day I haven't seen him again." App. 184, ll. 5-8. He went back to the house a second time, and only Howell was there. App. 185, ll. 6-7. He fell asleep, and when he woke up, Jeremiah Johnson and Gantt were there. App. 185, ll. 9-11. Jeremiah Johnson asked him to clean the door panel of a car, and he did it because he needed money. App. 185, l. 12 – 186, l. 9.

The state called Detective Barton as its final witness during petitioner's trial. App. 225, ll. 11-16. As relevant, Barton explained that petitioner had been driving a gold or silver Oldsmobile or Buick, which law enforcement tried to find. App. 337, ll. 10-14. A year later,

law enforcement received information concerning where petitioner's family lived, so they went out to see if they could find anything out about the car. App. 337, ll. 10-21. The gold Buick Regal was located at his family's residence. App. 337, ll. 23-25. They ran the tag, and the car was owned by petitioner's aunt, Joyce Johnson. App. 338, ll. 1-8. Prior to that, the car was owned by petitioner's grandmother, and before that it was registered to Martha Everett. App. 338, l. 9-19. The state asked Barton to compare photographs from photographs from a video of Howell's residence in July of 2012 to the photographs of the car taken in September 2013 at petitioner's family's residence. App. 342, ll. 12-21. Barton concluded that, by comparison, the September 2013 car was the same car that was at Howell's residence during the incident. App. 343, ll. 1-5.

The state then asked Barton "can you please just summarize why you took out those warrants on [petitioner]?" App. 344, ll. 18-23. Trial counsel objected as asked and answered, but the court asked to hear the response. App. 344, l. 24 – 345, l. 2. Barton replied, "Based on the codefendant's statement, of Zachary Gantt, that gave us a statement as to his involvement; the codefendant's involvement as well as the involvement of [petitioner]." App. 345, ll. 3-7. Trial counsel again objected and requested the answer to be struck. App. 345, ll. 8-10.

At a bench conference, trial counsel explained that the state had previously tried to discuss co-defendant Johnson's statement which was excluded on hearsay grounds. App. 345, l. 23 – 346, l. 3. He argued that the state was attempting to put in "more evidence that wasn't part of this, that's not part of the case" which he contended was extremely prejudicial. App. 346, l. 20 – 347, l. 8. The court responded that it tended to agree and asked the state why that testimony would not implicate the confrontation clause since it involved a statement of someone who did not testify, and no one had a chance to cross-examine. App. 347, ll. 18-23. The state argued it

never heard Barton say the name Johnson and believed it was a preemptive objection. App. 348, ll. 1-5, 10-14. The court sustained the objection on a confrontation clause basis. App. 348, ll. 15-21. Trial counsel further stated that it was "just as bad" if Barton testified to "other codefendants" and requested Barton's testimony to be proffered. App. 349, ll. 2-4, 15-17. The state reiterated that all Barton was doing was "running through the list of what – the reason why he brought the charges on [petitioner]." App. 350, ll. 14-20.

Barton's proffer

During the *in-camera* testimony, the state asked, "can you list the factors why you feel that these arrest warrants were issued." App. 351, ll. 12-16. Barton replied:

> Based on Zachary's statement, as you heard from him yesterday, he acknowledged his involvement as well as the codefendant's involvement, Ezra Williams being one of those codefendants. We were able to corroborate and substantiate many, many details, just about every detail that he gave us in the statement.
>
> That statement coupled with his mother's statement, what she told us when we heard from her yesterday, uh, that put Ezra at the scene.
>
> That statement from Jonathon Johnson, who puts Ezra at the scene during the time of the incident.
>
> The vehicle evidence that was found at Joyce Johnson's house, who is Ezra's aunt who had the vehicle or who – by the DMV records shows that Ezra had access to that vehicle during the time of the incident.
>
> The cell phone records showing that his cell phone is pinging of the cell tower in the Homeland Park area.
>
> Based on all those facts, I felt like we have a pretty good case to charge him with the murder, armed robbery, kidnapping, and possession.

App. 351, l. 17 – 352, l. 18. Based on this answer, trial counsel argued that Barton did not look at the car until a year later, and the court explained it was the "weight and not the admissibility."

App. 352, l. 24 – 353, l. 4. Trial counsel argued that was "why [Barton] thinks Zachary Gantt's testimony was so good." App. 353, ll. 5-7. The court replied that while it noted his objection, the court did not think it fell into opinion as "it just explains why he took the actions he did, which is different from opinion." App. 353, ll. 8-13. Trial counsel then raised an objection under Rule 403, due to the prejudicial value. App. 353, ll. 14-16. He argued that the prejudicial effect of the law enforcement officer coming in and saying why the case was good made certain choices outweighed the probative value. App. 353, ll. 17-22. The court replied that it did not hear Barton say "I think we had a good case, this is why we made the case," however, the court asked Barton not to testify "I think we had a good case" because that was an opinion. App. 353, l. 23 – 354, l. 5.

Barton's trial testimony

The state resumed its direct examination and asked Barton "Can you please tell the ladies and gentlemen of the jury some of the factors or some of the reasons why out took out the warrants against" the petitioner for the charged offenses. App. 354, ll. 22-25. Barton replied:

> Yes, sir. Based on Zachary Gantt's statement acknowledging his involvement as well as the codefendants involvement in the incident, and one of the codefendants being Ezra Williams.
>
> We were able to substantiate Mr. Gantt's, most all the details of the statement that he gave us.
>
> We also spoke with Kizzie Roebuck, who had spoken with Ezra – you heard from her yesterday. We had her statement.
>
> We had Jonathan Johnson's statement, who put Ezra at the scene during the time of the incident.
>
> We had Mr. Williams' cell phone records which showed that he was pinging off cell towers in the Homeland Park during the time of the incident.

> That coupled with the vehicle found a year later, matching the description of the one that was on the video at Kyndra Howell's residence, we had enough evidence to charge Mr. Williams with armed robbery, possession of a weapon during the commission of a violent crime, kidnapping and murder of C.J. Patel.

App. 355, l. 4 – 356, l. 4.

On cross-examination, Barton agreed that petitioner's cellphone record did not establish that he was at the scene, but rather that he was in the Homeland Park area. App. 357, ll. 1-8.

Discussion

The trial court abused its discretion by refusing to exclude or limit detective Barton's testimony concerning petitioner's arrest and his reasons for seeking arrest warrants for petitioner because it was irrelevant, cumulative, and the prejudicial effect substantially outweighed any probative value the testimony may have had. Therefore, this Court should reverse.

a. Barton's testimony concerning the reasons he took out arrest warrants for petitioner was wholly irrelevant

Generally, relevant evidence "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Rule 401, SCRE. However, "[e]vidence which is not relevant is not admissible." Rule 402, SCRE.

The fact that petitioner was arrested did not tend to establish any fact of consequence, namely, whether petitioner committed the offenses he was charged with. *See State v. Passio*, 433 S.C. 666, 678, 861 S.E.2d 785, 791 (Ct. App. 2021) ("Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved") (citing *State v. Sweat*, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App. 2004)). Any relevance the fact of petitioner's arrest might have had, however, is entirely diminished

since the jury was acutely aware that petitioner was arrested because the jury was expressly informed that it was selected and tasked with determining the guilt or innocence of petitioner. App. 80, l. 22 – 81, l. 5 (The trial court welcoming the jury and explaining, "the fact that this gentleman has been arrested, charged and indicted is not evidence of his guilt in any sense of the word. These documents are simply the charging mechanism by which the State of South Carolina brings persons such as Mr. Williams before the court for a trial and determination by a jury, such as yourselves, of their guilt or innocence."). Instead, the state was allowed to elicit highly irrelevant testimony that had no bearing on whether it was more or less probable that petitioner was involved with the armed robbery, kidnapping, murder, or possession of a weapon in relation to those charges. *But see State v. Preslar*, 364 S.C. 466, 613 S.E.2d 381 (Ct. App. 2005) (determining that evidence of Preslar's charges for criminal sexual conduct were "necessary and relevant for the jury to determine why the letters written to Melissa were threatening and intimidating," as the letters asked Melissa to drop the charges). The challenged testimony also did not assist the jury in "arriving at the truth of an issue" because there was no dispute that petitioner was arrested and Barton's reasons for seeking arrest warrants did not bear on any material issue in dispute. *State v. Lyles*, 379 S.C. 328, 337, 665 S.E.2d 201, 206 (Ct. App. 2008) (citing *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986); *Toole v. Salter*, 249 S.C. 354, 361, 154 S.E.2d 434, 437 (1967)).

The only purpose the state had for eliciting this irrelevant testimony was to suggest to the jury that because detective Barton arrested petitioner, he was guilty of the crimes he was arrested for. That is improper. Nor does the fact that petitioner was arrested make relevant Barton's reasoning underlying the arrest warrants. *See United States v. Nsahlai*, 121 F.4th 1052, 1060 (4th Cir. 2024) (explaining that "the threshold for relevance is a low bar, but it nonetheless

requires that the evidence be 'worth consideration by the jury' or have a 'plus value' on the question before that body."). Therefore, Barton's testimony that petitioner was arrested and summarizing his reasoning for taking out arrest warrants was wholly irrelevant, and the trial court abused its discretion by refusing to limit Barton's testimony in this area.

b. Barton's testimony was cumulative, conclusory, and not proper for a witness—he did not inform the jury but rather made a closing argument

Even further, Barton's testimony was cumulative to the evidence already presented. The cumulative nature of the testimony is apparent because he merely reiterated the same sources of information which had already been testified to by Barton, other witnesses, and entered into evidence. However, the full scope of the error is that the solicitor was permitted to give two closing arguments: first through Barton at the close of the state's case-in-chief, and again just prior to jury deliberations.

Even if evidence is relevant, it should otherwise be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point." *State v. Funderburke*, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968). In addition, "[t]he determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." *State v. Henley*, 428 S.C. 649, 662, 837 S.E.2d 639, 646 (Ct. App. 2019) (quoting *State v. Gillian*, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)).

The probative value of Barton's testimony concerning petitioner's arrest is minimal, if it has any at all. *See State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) (explaining that "probative value is the measure of the importance of the evidence to the

outcome of a case or the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues.") (internal quotations and alterations omitted). As discussed, the fact that petitioner had been arrested is apparent from the function of a jury trial. It does not bear repeating from a law enforcement officer and adds nothing to the state's case. Similarly, Barton's testimony exploring his reasoning for taking out arrest warrants has little probative value, especially considering that on this record the testimony was redundant of both Barton's prior testimony and the rest of the evidence adduced at trial. *Henley*, 428 S.C. at 662, 837 S.E.2d at 646. The result is that his summation testimony presented only "additional evidence of the same kind to the same point," and thus, was not probative to any issue in dispute. *Funderburke*, 251 S.C. at 540, 164 S.E.2d at 311.

Moreover, the minimal probative value of Barton's testimony was substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. The state's request for its lead detective to summarize the reasons for petitioner's arrest is nothing more than an attempt to make a second closing argument through its lead detective *as* evidence. In doing so, the state was allowed to use detective Barton to piece together the state's evidence and highlight the critical pieces of evidence against petitioner right before closing. In making closing arguments, counsel has many roles to play, and one of the most important is to summarize the evidence, repeat it, and interpret it in the context of the case to connect all the individual pieces together. This function is critical because it is often not clear to the jury how any individual witness's testimony relates to the bigger picture. In this way, closing arguments are "such an important phase of a criminal trial." *State v. Beaty*, 423 S.C. 26, 40, 813 S.E.2d 502, 509 (2018). Because closing arguments are of paramount importance for allowing the parties to show the jury how it

can find in their favor and why it should, the state should not have been given two bites at that apple.

Importantly, Barton's challenged testimony was merely a repetition of what had come before. Perhaps most offensively, the state's request for Barton to summarize his reasons for seeking arrest warrants for petitioner allowed Barton to comment on that evidence, draw conclusions about what the evidence showed, and assign weight to that evidence by linking it to his reasoning for arresting petitioner. For example, Barton's testimony drew the conclusion that Jonathan Johnson's statement put petitioner at the scene, however, his trial testimony was that he did not know the man who answered the door at Howell's house, and he did not make a positive identification of petitioner during trial. App. 183, ll. 22-24; 184, ll. 5-8; 355, l. 4 – 356, l. 4. His testimony was also overly prejudicial because it allowed the state to discuss petitioner's cellphone records without entering them into evidence for the jury's consideration. App. 355, l. 4 – 356, l. 4. The state was allowed to present *as evidence* Barton's summary of the evidence that he opined was "enough evidence to charge Mr. Williams with armed robbery, possession of a weapon during the commission of a violent crime, kidnapping and murder of C.J. Patel." App. 355, l. 4 – 356, l. 4. While it would have been proper for the solicitor to link the evidence together and argue to the jury that it pointed to petitioner's guilt, it was improper for detective Barton's testimony to mirror a summation of the evidence and a closing argument for the state. It cannot be said that the prejudicial effect of this cumulative testimony was substantially outweighed by the scant probative value it presented. Rule 403, SCRE.

Accordingly, because Barton's testimony concerning the "factors" underlying petitioner's arrest were irrelevant, cumulative, and had scant probative value, the trial court abused its discretion by refusing to exclude Barton's testimony. The prejudicial effect of the trial court's

error was amplified because it allowed the state to connect the pieces of evidence the jury already had, just like a closing argument.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this Court reverse his convictions and remand his case for a new trial.

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This 31st day of December, 2025.