STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JEREMY SAVOY CORNISH,

APPELLANT

APPELLATE CASE NO. 2022-001536

Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge

Opinion No. 6146

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing regarding this Court's holding that the search warrant in the case was proper and the evidence seized thereafter was admissible evidence due to the application of the independent source doctrine that was offered as a cure for the previous warrantless and unlawfully obtained DNA taken from appellant because this Court might have inadvertently overlooked the fact that the independent source concept used here lacked the "genuinely independent" factor and thus failed to remedy the prior wrongful DNA seizure as the underlying reason for the requested search warrant was a precaution utilized to sanitize, minimize, and erase the illegal DNA seized.

The uncontroverted law of the case at bar is that police took buccal swabs from appellant unconstitutionally without appellant's consent because he invoked his right to counsel while being questioned by officers at the police station. On appeal, the issue raised was whether the trial judge erred in applying the independent source doctrine with respect to the search warrant issued in the case in order to cure the prior unlawfully obtained DNA from appellant because the "genuinely" independent factor required under the independent source rule was lacking in the case and hence the search warrant was not legitimate. This Court's ruling in the matter follows:

> Here, law enforcement initially obtained Cornish's buccal swab following his voluntary interview on December 23, 2019. As noted above, Cornish withdrew his initial consent when asked if he would consent to providing a swab from DNA comparison. He then requested an attorney, stating, "listen, I—I'd rather be getting a lawyer involved in this here because I don't, you know, need nothing fishy going on." Sergeant Creech testified that Cornish reengaged the officers by asking a series of questions; thus Creech resumed his questions and—after additional explanation and discussion—Cornish again agreed to provide a swab.
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> During pretrial motions, the circuit court heard arguments on Cornish's motion to suppress and considered the State's proffered testimony. The circuit court found Cornish was in custody during the December 2019 interview and that the DNA collection after he requested counsel was involuntary. However, the circuit court held the DNA evidence was admissible under the independent source doctrine because the State later obtained a valid search warrant for the DNA swabbing. The circuit court detailed these rulings in a written order.
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> We see no error in the circuit court's finding that the independent source doctrine allowed for the admission of this DNA evidence. Cornish does not challenge the sufficiency of the September 2022 buccal swab warrant; instead, he argues the resulting DNA evidence must be excluded because the warrant was not "genuinely independent" since the decision to seek it was directly tied to the illegality in the initial collection of Cornish's DNA.

The search warrant affidavit created one month prior to trial on September 23, 2022, to obtain what was an underlying attempt at DNA cleansing did not cure the unconstitutionally

seized DNA evidence from appellant on December 19, 2019, because the "genuinely independent" source requirement was not met in the case. Note that sans the DNA evidence, there was no proof that appellant was present at the crime scene and thus sufficient evidence of guilt against appellant could not have been established at trial.

On the morning of Tuesday, December 17, 2019, as part of his supervisory duties appellant picked-up three workers of his uncle's construction crew—Justin Hopkins (Hopkins), Dante, and Quinton—and drove to the job site on McEntire Air Force Base. Due to rainy weather conditions, work for the day was cancelled after about an hour and a half. R. 1185, ll. 7-14; R. 1243, ll. 2-17; R. 1340, ll. 7-12; R. 1541, ll. 23-25.

Appellant left the base with his workers and dropped off Dante and Quinton. While driving to drop-off Hopkins at his apartment in the Landmark Apartments, appellant first stopped at the Department of Motor Vehicles (DMV). R. 1243, ll. 17-25; R. 1341, ll. 1-5. They then went to appellant's home in Hopkins where appellate met with his girlfriend. Appellant took his girlfriend to her parents' house, dropped her off there, and continued back toward Hopkins' apartment. On the way, Hopkins inquired as to whether appellant wanted to buy marijuana. As a result, Hopkins guided appellant to the parking lot of an unfamiliar apartment complex—the Woodland Village Apartments. R. 1244, ln. 14—R. 1245, ln. 10; R. 1344, ll. 14-24; R. 1342, ln. 16—R. 1343, ln. 3.

According to appellant, Hopkins left the white dually work truck for one of the apartments in the complex. Appellant indicated that he stayed in truck, checked his work email, and was called by a friend. R. 1245, ln. 13—R. 1252, ln. 4. After waiting for some time, appellant believed Hopkins was taking too long. As a result, appellant began driving around the apartment complex looking for Hopkins. At approximately 11:00am, appellant saw Hopkins

riding on a bicycle nearby, and quickly drove up to him. Witnesses, including Christy Meneses (Meneses) saw Hopkins get off the bike and into the truck, only to get back out of the truck, lean the bicycle against a nearby tree, and then get back into the truck. The truck then quickly left the Woodland Village Apartments. R. 748, ln. 13—R. 752, ln. 5; R. 756, ln. 12—R. 757, ln. 8; R. 758, ln. 22—R. 760, ln. 22; R. 1253, ll. 4-19; R. 1330, ln. 20—R. 1331, ln. 8; R. 1368, ln. 19—R. 1369, ln. 21; R. 1373, ll. 2-23.

Appellant drove to KJ's Grocery where he dropped-off Hopkins to get cigarettes and cigars.[1] He then proceeded to Hopkins' nearby apartment. Once Hopkins arrived, Appellant indicated he obtained his portion of marijuana, and left. R. 1253, ln. 19—R. 1256, ln. 18.

However, at 10:59am, police received a 911 call from the Woodland Village Apartments regarding a home invasion. Lexington County Sheriff's Office Deputy Scott Purdy (Dep. Purdy) arrived at 11:03am and encountered Donnovin Haynes (Haynes) outside. After Haynes indicated his friends were shot, deputies kicked-in the locked front door to the first-floor apartment. As they cleared their way through the apartment, they observed Duwan Williams was on the couch bleeding but still breathing, while two others—Branton Booker in the hallway and Sheldon Livingston in a bedroom—were unresponsive. R. 447, ln. 16—R. 448, ln. 12; R. 450, ln. 20—R. 454, ln. 4; R. 457, ln. 10—R. 462, ln. 11. Ultimately, all three of Haynes' roommates succumbed to their gunshot wounds. R. 496, ll. 4-18; R. 497, ll. 2-9; R. 505, ln. 22—R. 506, ln. 14; R. 513, ll. 2-12. Although Haynes hid in his bathroom closet during the incident before escaping though his bedroom window, he indicated hearing at least two voices inside the apartment. R. 562, ln. 18—R. 565, ln. 13; R. 567, ln. 17—R. 570, ln. 24. Police processed the apartment and collected evidence, including swabs for touch DNA.

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[1] Video surveillance confirmed appellant and Hopkins arrived at KJ's at approximately 11:10 am. R. 963, ll. 3-4.

Officers spoke with appellant on several occasions, including December 23, 2019, when police asked appellant to come to the station. While at the sheriff's office, appellant was interrogated for approximately an hour and a half regarding the case, as well as inconsistencies with prior statements to police. Appellant was not informed of his rights, or that he was in custody. When the issue of obtaining a sample of appellant's DNA arose, Appellant stated, "Listen, I—I'd rather be getting a lawyer involved in this here because I don't, you know, need nothing fishy going on." Police responded, "All right." and appellant said, "You know what I mean?" R. 89, ln. 13—R. 91, ln. 12; R. 105, ll. 17-21; R. 1634, ln. 22—R. 1635, ln. 1. Officers continued to talk with appellant, and ultimately convinced him to provide a sample of his DNA despite further protestations regarding the absence of his lawyer. R. 1635, ln. 2—R. 1644, ln. 25. Appellant was arrested on December 31, 2019. R. 105, ll. 15-16.

Appellant's DNA swab, along with swabs taken from the incident location, was tested at the South Carolina State Law Enforcement Division (SLED). Results indicated that appellant's DNA was part of a four-contributor mix collected from the bolt lock inside of Haynes' apartment front door. R. 1153, ln. 10—R. 1159, ln. 9. On September 23, 2022, police filled out a search warrant for another DNA swab of appellant after being made aware of questions regarding the voluntariness surrounding the first sample. R. 81, ln. 16—R. 84, ln. 5. R. 1546-1550. A sample of appellant's DNA was again obtained and sent to SLED for testing without notifying appellant's attorneys or seeking a hearing. R. 84, ln. 6—R. 85, ln. 19.

Appellant's case proceeded to trial October 10, 2022. During pre-trial motions, the defense sought suppression of the DNA evidence as fruit of the poisonous tree, and that the first unlawful search was not salvaged by the independent source doctrine. R. 17, ln. 15—R. 18, ln. 22; R. 372, ln. 9—R. 378, ln. 12; R. 413, ln. 3—R. 414, ln. 6; R. 1551-1556. After weighing the

facts and circumstances surrounding the collection of appellant's DNA on December 23, 2019, based upon the evidence presented testimony, the recording of appellant's interrogation on December 23, 2019, as well as a transcript of the interrogation, the trial court determined in its written order that appellant was interrogated while under custodial circumstances without being warned of his rights and after he asked for his lawyer. As such, appellant's statement and DNA should be suppressed. R. 407, ln. 19—R. 412, ln. 2; R. 1565-1566; R. 1569-1699. However, the trial court further ruled that the defect was cured pursuant to the independent source doctrine. As such, the DNA evidence was admitted over objection. R. 407, ln. 19—R. 412, ln. 2; R. 1133, ll. 2-13; R. 1566-1568.

Here, the trial judge erred as a matter of law by subsequently determining the state cured the taint of its unlawful search through the independent source doctrine. "The question to be resolved when it is claimed that evidence subsequently obtained is "tainted" or is "fruit" of a prior illegality is whether the challenged evidence was come at by exploitation of [the initial] illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Segura v. United States, 468 U.S. 796, 804–05, 104 S.Ct. 3380, 3385, 82 L.Ed.2d 599 (1984) (internal quotes omitted). As Justice Holmes explained in Silverthorne Lumber Co. v. United States, "[t]he essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all." Id. 251 U.S. at 392, 40 S.Ct. at 183, 64 L.Ed. 319. Thus, "[i]f knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the government's own wrong cannot be used by it in the way proposed." Id. 251 U.S. at 392, 40 S.Ct. at 183, 64 L.Ed. 319.

The independent source doctrine applies when a search pursuant to [a] warrant was in fact a "genuinely independent" source of the information and tangible evidence' that would otherwise be subject to exclusion because they were found during an earlier unlawful search. United States v. Hill, 776 F.3d 243, 251 (4th Cir. 2015) (quoting Murray, 487 U.S. at 542, 108 S.Ct. 2529). To determine whether the search warrant was "genuinely" independent, a two-prong test is applied. Id. Specifically, "the unlawful search must not have affected (1) the officer's decision to seek the warrant, or (2) the magistrate judge's decision to issue it." Id. (internal quotations and alterations omitted).

In the present case, regardless of whether any probable cause was allegedly presented on the face of the search warrant, the warrant was not "genuinely independent" as it failed the first prong of the test. The officer's decision to seek the search warrant was specifically and directly tied to the illegality of the unlawful search. First, as Sergeant Creech admitted, he obtained the warrant at the direction of the prosecutor after being made aware of questions regarding the voluntariness surrounding the first sample. R. 81, ln. 16—R. 84, ln. 5. R. 1546-1550. Second, the officer would not have even sought the warrant if he believed the DNA was of no evidentiary value to the case. By the time the state sought a search warrant for appellant's DNA, it was well over two years since the first swab was illegally obtained and tested, the results of which provided the only evidence in the entire case potentially placing appellant inside the apartment.[2] As such, the state's knowledge of the unlawfully seized evidence and its importance in its case undoubtedly drove its decision to seek the warrant 17 days prior to trial. In other words, the unlawful search—and the fruits already gleaned therefrom—affected the officer's decision to seek the warrant. Accordingly, the trial court erred by finding the independent source doctrine

[2] As the DNA expert conceded, he could not testify whether DNA came to be present at a given location was by primary, secondary, or tertiary means. R. 1172, ln. 15—R. 1176, ln. 8.

cured the defects of the original unlawful search; rather, the DNA tests results remained fruits of the poisonous tree.

Appellant was also prejudiced by the trial court's erroneous ruling, as it was the sole evidence circumstantially placing appellant inside the apartment in Woodland Village Apartments and cut directly at the heart of Appellant's defense. As the solicitor unequivocally stated in his argument to the trial court, "If your honor is to suppress this DNA evidence, it would significantly—in fact, substantially impair the prosecution of this case. We would not be able to establish our case. Despite all of the other PC we have, we have a duty now to disprove alibi."[3] R. 394, ll. 16-21.

Further, the state emphasized appellant's DNA on the apartment door lock during its closing argument to the jury more than once to place appellant inside as one of at least two intruders. R. 1438, ll. 1-8; R. 1442, ll. 22, ln. 23—R. 1444, ln. 3. It was the state's key evidence in placing appellant as one of at least two intruders committing the offenses, regardless of the fact that even the DNA expert could not testify whether DNA came to be present at a given location by primary, secondary, or tertiary means. R. 1172, ln. 15—R. 1176, ln. 8. While there was testimony that two voices were heard inside the apartment during the break-in, Appellant was not identified as one of the assailants—either by face or voice. R. 577, ll. 16-22; R. 586, ll. 13-16. In fact, no witness even saw appellant entering or leaving the apartment; rather, they saw the truck driven by appellant arrive and pick-up his fleeing codefendant. R. 1328, ln. 3—R. 1332, ln. 13; R. 1334, ln. 11—R. 1336, ln. 19; R. 1388, ll. 1-3.

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[3] Notably, the state later successfully argued to the court during the jury charge conference that the defense of alibi did not apply, thus partially negating its own argument against suppression. R. 1402, ln. 1—R. 1406, ln. 6; R. 1414, ln. 5-24; R. 1416, ln. 10—R. 1417, ln. 1.

Moreover, the state's insistence that two firearms were used in the incident—a 9mm and a .38 special—fails to place appellant inside the apartment either. First, no guns used in the homicides were recovered. R. 1315, ln. 6—R. 1316, ln. 23. Second, it was Haynes, not appellant, who was associated with any firearms in the case—including a 9mm Glock, and one Taurus revolver that could shoot either the .38 special or .357 magnum ammunition which could have been used in the three homicides. R. 909, ln. 1—R. 914, ln. 17; R. 983, ln. ln. 4—R. 986, ln. 24; R. 1069, ln. 5—R. 1070, ln. 17; R. 1073, ln. 17—R. 1078, ln. 23; R. 1079, ln. 17—R. 1080, ln. 6; R. 1083, ln. 2—R. 1085, ln. 7; R. 1348, ln. 7—R. 1349, ln. 20; R. 1378, ln. 9—R. 1379, ln. 25. Thus, the only evidence placing appellant inside the apartment where three individuals were shot and killed was his DNA mixture combined with three other contributors that could have been placed there by secondary or tertiary means. R. 1169, ll. 8-14.

Finally, the state utilized appellant's DNA mixture to argue that he acted with malice as well. Specifically, the state forcefully argued as follows:

> [B]ut here's what you really know about [Appellant], why you know he's a cold-blooded, coldhearted killer. Second in, locked that lock. Ain't anybody getting in here, no help is coming, and everybody in here is gonna die. His DNA. He turned an apartment, a home, into a kill box. Nobody's going home. Nobody's going anywhere. He's killing them all.

R. 1442, ll. 22, ln. 23—R. 1444, ln. 3. Thus, Appellant was prejudiced.

A summary of the state's alleged independent information included appellant's presence at the DMV with Hopkins, which was a fact that appellant failed to include initially during the first round of police questioning, and the fact that appellant was in the company of Hopkins at the apartment complex in question, as such was used to bootstrapped Hopkins' case onto appellant's case via the connection that appellant was in the company of Hopkins of the date the murders were committed.

HOWEVER, the state's move to clean-up the unlawfully seized DNA evidence was first and foremost the reason behind the decision to obtain the search warrant and gather subsequent DNA from appellant. Note Sergeant Creech's statements regarding the matter. When questioned about the 2022 warrant affidavit, Sergeant Creech noted SLED had already completed "quite a bit of testing" when he obtained the September 2022 warrant, and explained he obtained the search warrant because he was made aware that there were potential issues with the 2019 DNA collection, and the solicitor believed any such issues could be remedied with a warrant. Sergeant Creech clarified that he did not inform the magistrate that prior samples had been obtained and tested because the probable cause for the warrant was not based upon these prior results. Sergeant Creech further testified that he told the magistrate he was seeking the search warrant years after the incident due to an issue with the initial DNA collection, but he did not report the prior DNA results because he did not want to influence the magistrate's decision.

Therefore, there is no ignoring or getting around the fact that the state's search warrant was a clean-up motivated maneuver due to the previous unlawfully obtained DNA extracted from appellant, which meant that there was no "genuinely independent" source to support the search warrant as the reason behind securing the warrant because the purpose behind securing the warrant was inextricably and solely tied to erasing the taint of the prior illegally obtained DNA. Note Sergeant Creech's confession testimony below:

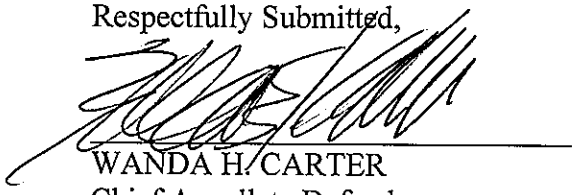
> "It appeared to us that once we answered his questions and concerns about the process that he had no objection to giving that to us." Still, Sergeant Creech noted, "Two years ago in hindsight I can certainly see how looking over this it becomes an issue. If we had felt like there was a question of voluntariness at the time, we wouldn't have collected the swab."

Clearly, despite all of the information submitted to garner the search warrant at issue in the case; nonetheless, an analysis of the motive behind the state's decision to obtain the search

warrant did not satisfy the "genuinely independent" factor that was required in order to apply the independent source rule for the search warrant despite the information listed in the affidavit because the state's singular impetus for seeking the search warrant was prompted by the goal of sanitizing the prior illegal DNA evidence procured initially from appellant. The use of the independent source doctrine to cure the previously illegally obtained DNA from appellant was inapplicable in this case. The prejudice remained because sans the DNA evidence appellant could not be placed at the crime scene and hence the case was devoid of proof beyond a reasonable doubt to establish appellant's guilt on the murder charges.

WHEREFORE, based on the points outlined above, counsel for appellant would request that this Court grant the petition for rehearing in the case.

Respectfully Submitted,



WANDA H. CARTER
Chief Appellate Defender

This 28th day of May, 2026.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

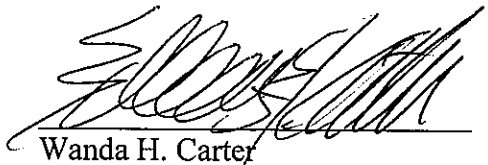
JEREMY SAVOY CORNISH,

APPELLANT

APPELLATE CASE NO. 2022-001536

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 Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jeremy Savoy Cornish, #389327, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 28th day of May, 2026.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Thursday, May 28, 2026 4:14 PM
To: Melody Brown
Cc: 'abennett@scag.gov'; Carter, Wanda
Subject: 2022-001536 - State v. Jeremy Savoy Cornish - Petition for Rehearing
Attachments: 2022-001536 - State v. Jeremy Savoy Cornish - Petition for Rehearing.pdf

Dear Ms. Brown,

Attached please find a copy of the Petition for Rehearing in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense