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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Patrick C. Fant, III, Circuit Court Judge

Lower Court Case No. 2023-GS-23-5351

The State, Respondent,

v.

Richard David Przybylski, Appellant.

Appellate Case No. 2025-002570

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred by denying Mr. Przybylski's motion to suppress the evidence seized from Mr. Przybylski's car where the officers lacked reasonable suspicion to prolong the initial traffic stop to wait for a K-9 unit to respond to conduct a sniff of the vehicle?

2.

Whether the trial court erred by denying Mr. Przybylski's motion to suppress the evidence collected from his cell phone where the basis for the probable cause to search the cell phone was nothing more than the fact that drugs were found in Mr. Przybylski's car?

3.

Whether the trial court erred by prohibiting Mr. Przybylski from impeaching the testifying co-defendant with his prior inconsistent statement made to the assistant solicitor that he was the owner of the backpack where the drugs were found?

STATEMENT OF THE CASE

This is an appeal from a jury verdict finding Mr. Przybylski guilty of trafficking methamphetamine and the trial judge's imposition of a sentence of twenty-five years imprisonment.

Mr. Przybylski was indicted by the Greenville County Grand Jury for trafficking methamphetamine. His trial was held before the Honorable Patrick C. Fant, III and a jury from December 8 through December 10, 2025. Mr. Przybylski was represented by William Hellams. The State was represented by Sydney Case and Nicholas O'Neill. (Tr. p. 1). The jury found Mr. Przybylski guilty as charged and the trial judge sentenced him to twenty-five years.

STANDARD OF REVIEW

Issues 1 and 2

The standard of review on appeal from the denial of a motion to suppress based on the Fourth Amendment is two-fold. The appellate court “review[s] the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review.” *State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

Issue 3

“[A] trial court’s decision to admit evidence of a witness’s prior inconsistent statement will not be reversed absent a manifest abuse of discretion.” *State v. Blalock*, 357 S.C. 74, 78, 591 S.E.2d 632, 635 (Ct. App. 2003). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Stokes*, 381 S.C. 390, 398, 673 S.E.2d 434, 438 (2009).

STATEMENT OF FACTS

On the afternoon of March 3, 2023, Deputy Jonathan Hill of the Greenville County Sheriff's Office was on patrol when he claimed to have observed a black Honda Civic swerving within its lane of travel. (Tr. p. 137, ll. 1 – 23). Hill turned around and began following the vehicle. (Tr. p. 137, l. 24 – p. 138, l. 3). Deputy Hill did not activate his body-worn camera or in-car camera at that time. (Tr. p. 159, l. 16 – p. 160, l. 14). As he followed the vehicle, he observed it change lanes. He also observed an expired temporary license plate. (Tr. p. 138, ll. 4 – 16). Although Hill reported that both occupants of the vehicle appeared to be reaching around inside the vehicle, no video footage corroborates these observations. (Tr. p. 160, l. 9 – p. 161, l. 6). In fact, Hill's dash camera video directly contradicts his testimony which clearly shows the occupants of the vehicle were not reaching around as he claimed. (State's Ex. 2).

While stopped at a red light, Hill activated his body-worn camera and in-car camera and ran the vehicle's temporary tag through his computer system. (State's Ex. 2). The dash camera footage shows the vehicle's occupants sitting in the car, with the driver taking a drink from a cup. (State's Ex. 2). After the light changed, the vehicle proceeded through the intersection, and Deputy Hill activated his overhead lights. (Tr. p. 141, ll. 2 – 23).

The driver extended his left arm out of the window and pointed ahead, indicating he would pull over in an upcoming parking lot. (State's Ex. 2). Deputy Hill passed the vehicle and pulled in front of it before turning onto a side street, and the vehicle came to a stop in the parking lot where the driver had been pointing. (Tr. p. 142, ll. 1 – 25). Deputy Hill backed up and positioned his patrol vehicle behind the stopped car. (State's Ex. 2).

Upon approaching the vehicle, Deputy Hill immediately ordered the driver, later identified as Mr. Przybylski, to turn off the vehicle and step out. (State's Ex. 3; Tr. p. 144, ll. 6 – 18). When

Mr. Przybylski asked why he was being told to exit, Deputy Hill responded, “because I told you to.” (State’s Ex. 3). Deputy Hill told the passenger, later identified as Robert Scheffler, to “stop reaching around,” although body-worn camera footage shows that Scheffler was holding his cellphone with both hands and was not reaching for anything. (State’s Ex. 3). Mr. Przybylski stepped out and was immediately frisked. (State’s Ex. 3). A brown pocketknife was found in his pocket. (Tr. p. 144, ll. 22 – 24). Both men were directed to the rear of the vehicle, where Mr. Przybylski provided a photograph of his Georgia driver’s license on his cellphone, identifying himself. (Tr. p. 145, ll. 2 – 10; State’s Ex. 4).

Mr. Przybylski told Hill that he and Scheffler were coming from the Assembly View Apartments and were headed to the Best Western hotel on Pelham Road near Interstate 85. (Tr. p. 146, l. 23 – p. 147, l. 4). Deputy Hill did not believe the route of travel was consistent with that destination. (Tr. p. 147, ll. 5 – 10). When Deputy Hill asked Scheffler the driver’s name, Scheffler gave a different name than the one Mr. Przybylski had provided. (Tr. p. 145, ll. 17 – 21).

Just over a minute into the stop, Deputy Hill abandoned traffic enforcement and began asking questions about the occupants’ destination, departure location, and how they knew each other. (State’s Ex. 3). Approximately eight minutes into the stop, Deputy Hill asked for consent to search the vehicle which was denied. (State’s Ex. 3). Deputy Hill then requested a K-9 unit. (Tr. p. 148, ll. 4 – 10).

Deputy Taylor Hudson, the K-9 handler, arrived approximately forty minutes after the initial stop with his drug dog. (Tr. p. 172, l. 24 – p. 173, l. 5). The drug dog conducted a sniff of the vehicle and alerted to the presence of drugs by sitting down. (Tr. p. 174, l. 10 – p. 175, l. 19). Deputy Hill then searched the vehicle. Behind the driver’s seat, he located a gray and black backpack containing a Tupperware container wrapped in tape holding a clear crystal substance,

two digital scales with residue, and empty baggies. (Tr. p. 149, l. 1 – p. 151, l. 21). The substances were later confirmed to be methamphetamine. (State’s Ex. 13).

Deputy Hudson, the K-9 handler, Mirandized both occupants after the search. (Tr. p. 177, ll. 21 – 25). Neither took responsibility for the drugs. Deputy Hudson admitted to telling the occupants, “We’ll fingerprint it. That will tell us the truth.” (Tr. p. 182, ll. 7 – 9). However, fingerprint testing was never performed. (Tr. p. 193, l. 16 – p. 194, l. 2).

Robert Scheffler, the co-defendant and passenger, testified for the State at trial. He was incarcerated on a separate distribution charge at the time of his testimony and was also still charged with trafficking in this case. Scheffler acknowledged that he was testifying because he was “hoping for leniency from the Court.” (Tr. p. 198, l. 1 – p. 199, l. 6). Scheffler knew Przybylski as “M.D.” and had known him for about four months through a mutual friend. (Tr. p. 199, ll. 11 – 17). He testified that he was getting a ride from the Assembly View Apartments to the Best Western hotel to meet his drug dealer. (Tr. p. 199, ll. 18 – 24). Scheffler denied that the drugs were his. (Tr. p. 202, ll. 2 – 5).

On cross-examination, Scheffler admitted he had sat on this information for two and a half years before prosecutors came to him at the detention center. (Tr. p. 204, ll. 3 – 10). When asked whether he would do anything to get leniency on his pending charges, Scheffler responded: “As anyone would. Yes.” (Tr. p. 224, ll. 1 – 13).

The jury found Mr. Przybylski guilty as charged and the trial judge sentenced him to twenty-five years.

ARGUMENT

1.

The trial court erred by denying Mr. Przybylski's motion to suppress the evidence seized from Mr. Przybylski's car because the officers lacked reasonable suspicion to prolong the initial traffic stop to wait for a K-9 unit to respond to conduct a sniff of the vehicle.

Relevant Facts

Prior to trial, Mr. Przybylski filed a motion to suppress evidence obtained during the traffic stop, arguing that Deputy Hill violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 10 of the South Carolina Constitution by impermissibly expanding the scope and duration of the detention without reasonable, articulable suspicion. (Mot. to suppress; Mem. in support of mot. to suppress).

At the pretrial hearing defense counsel called Deputy Hill and questioned him regarding the basis for expanding the scope of the initial stop. Deputy Hill admitted that each of the factors he relied upon—swerving within the lane, reaching around inside the vehicle, abrupt lane changes, and delay in pulling over—could have innocent explanations. (Tr. p. 39, l. 11 – p. 42, l. 7). He further admitted that his in-car camera and body-worn camera were not activated during the period in which he claimed to have observed the most significant furtive movements. (Tr. p. 69, l. 10 – 20).

Deputy Hill acknowledged that his report stated the occupants were reaching around the vehicle after the turn onto Buncombe Road, but the in-car camera footage from that period did not corroborate those claims. (Tr. p. 70, l. 10 – p. 71, l. 10). Defense counsel pointed out that while following the vehicle, Deputy Hill was simultaneously driving, watching the occupants, and typing

information into his mobile data terminal which would have made it very difficult to have observed the level of detail he reported. (Tr. p. 91, l. 2 – p. 93, l. 10).

Hill's body-worn camera footage showed that when Hill told the passenger to "stop reaching around," the passenger was in fact holding his cellphone with both hands and was not reaching for anything. (Tr. p. 47, l. 15 – p. 48, l. 2; Tr. p. 68, ll. 10 – 24). Counsel argued that because Hill's claims about furtive movements were demonstrably false when cameras were rolling, his uncorroborated claims about pre-camera movements should be viewed with skepticism. (Tr. p. 30, l. 16 – p. 31, l. 20).

The State argued that officers do not need reasonable suspicion to ask off-topic questions during a traffic stop so long as the questions do not measurably extend the duration of the stop. (Tr. p. 27, ll. 18 – 25). The State further argued that the totality of the circumstances, including the swerving, lane changes, reaching, the expired tag, the departure from a known drug area, the inconsistent route, the wrong name given by the passenger, and both occupants being on their phones, provided reasonable suspicion to extend the stop for a K-9 sniff. (Tr. p. 99, l. 14 – p. 101, l. 19).

Defense counsel responded that the totality of the observable circumstances did not support expansion, noting that driving through a particular neighborhood, swerving within one's lane, and taking a moment to pull over are common, innocent behaviors. (Tr. p. 101, l. 24 – p. 104, l. 24). Deputy Hill abandoned the original purpose of the traffic stop within approximately ninety seconds of contact. Hill never completed writing the traffic citation until near the thirty-minute mark, giving the appearance that he was specifically attempting to prolong the stop while waiting for the K-9 unit. (Tr. p. 29, l. 13 – p. 32, l. 15).

The trial court denied defense counsel's motion to suppress. (Tr. p. 109, ll. 4 – p. 111, l. 25). The court found that the initial stop was proper and that Deputy Hill had a particularized and objective basis for reasonable suspicion under the totality of the circumstances. The court credited Deputy Hill's testimony that both occupants were reaching around the vehicle, notwithstanding the absence of video corroboration. The court further found that the questions asked during the stop did not measurably extend its duration. With respect to waiting for the K-9 unit to arrive, the court found that once reasonable suspicion existed, extending the stop to wait for the K-9 was permissible. (Tr. p. 109, ll. 4 – p. 111, l. 25).

Defense counsel renewed the motion to suppress at the close of the State's case when moving for a directed verdict. The motion was again denied. (Tr. p. 248, l. 18 – p. 249, l. 14).

Legal Framework

“A person has been seized within the meaning of the Fourth Amendment at the point in time when, in light of all the circumstances surrounding an incident, a reasonable person would have believed that he was not free to leave.” *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014). Furthermore, “the South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” *State v. Forrester*, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001).

“In carrying out [a traffic] stop, an officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. *State v. Pichardo*, 367 S.C. 84, 98, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing *United States v. Sullivan*, 138 F.3d 126 (4th Cir. 1998)). “However, any further detention for questioning is beyond the scope of the stop and therefore

illegal unless the officer has a reasonable suspicion of a serious crime.” *Pichardo*, 367 S.C. at 98, 623 S.E.2d at 847-48.

Ordinarily, a police officer’s purpose during a traffic stop “is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning.” *Pichardo*, 367 S.C. at 98, 623 S.E.2d at 848. “In order to prolong or exceed the scope of a stop beyond the initial traffic violation, law enforcement must have reasonable suspicion that criminal activity may be afoot.” *State v. Frasier*, 437 S.C. 625, 634, 879 S.E.2d 762, 767 (2022). “Reasonable suspicion is something more than an ‘inchoate and unparticularized suspicion’ or hunch.” *Robinson v. State*, 407 S.C. 169, 182, 754 S.E.2d 862, 868 (2014) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). The continued questioning and detention of a vehicle is constitutionally permissible “when the officer has a reasonable articulable suspicion of other illegal activity or when the valid traffic stop has become a consensual encounter.” *Pichardo*, 367 S.C. 84, 99, 623 S.E.2d 840, 848 (Ct. App. 2005).

Discussion

The trial court erred by denying Mr. Przybylski’s motion to suppress because the totality of the circumstances did not support a finding of reasonable suspicion to extend the traffic stop beyond its original purpose.

Deputy Hill initiated the traffic stop for a minor traffic infraction. As this Court noted in *Pichardo*, an officer’s purpose during a traffic stop “is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning.” 367 S.C. at 98, 623 S.E.2d at 848. Yet in this case, within approximately ninety seconds of contact, Hill abandoned the traffic purpose entirely. He did not ask about insurance or registration. Instead, he began asking off-topic questions about where the occupants were coming from, where they were

going, and how they knew each other. (State's Ex. 3). Approximately eight minutes into the stop, he asked for consent to search the vehicle, which was denied. (State's Ex. 3). It was the refusal to consent to search which triggered Hill calling for a K-9 unit. (Tr. p. 148, ll. 4 – 10). Hill wasn't investigating a traffic violation. He was conducting a fishing expedition for drugs.

This is precisely the kind of extension that requires reasonable suspicion. The factors Deputy Hill cited, individually and collectively, fail to meet this standard. Deputy Hill claimed that both occupants were reaching around inside the vehicle before the stop. This was the most critical factor relied upon by the State, and it is the one most thoroughly undermined by the evidence. Hill's body-worn camera footage directly contradicts his testimony. When Hill ordered the passenger to "stop reaching around," the footage shows Scheffler holding his cellphone with both hands and not reaching for anything. (State's Ex. 3; Tr. p. 47, l. 15 – p. 48, l. 2; Tr. p. 68, ll. 10 – 24). His dash camera footage similarly shows the occupants sitting normally in the vehicle, not reaching around, and not engaging in furtive movements. Instead, the dash camera footage shows Mr. Przybylski calmly taking a drink from a cup. (State's Ex. 2).

Hill admitted that his cameras were not activated during the period in which he claimed to have observed the most significant furtive movements. (Tr. p. 69, l. 10 – 20). The trial court credited Hill's uncorroborated testimony about pre-camera observations despite video evidence from the same stop contradicting his characterization of the occupants' behavior. Where video evidence demonstrates that an officer's claims about a suspect's behavior are false in one instance, the court should not credit that officer's unverified claims about the same type of behavior at an earlier point during the same encounter.

Deputy Hill also relied on the vehicle "swerving" within its lane and making abrupt lane changes. Hill admitted on cross-examination that each of these behaviors have innocent

explanations. (Tr. p. 37, l. 22 – p. 42, l. 7). Swerving within one’s lane is common driving behavior, and changing lanes on a multi-lane road is entirely unremarkable. Hill admitted that the vehicle did not go outside its lane of travel, nor did it ever swerve to the point of even bumping the dividing line of its lane of travel. (Tr. p. 38, ll. 3 – 10). These observations, standing alone or in combination, do not support any inference of criminal activity, let alone a reasonable one.

Deputy Hill cited the driver’s supposed delay in pulling over as supporting reasonable suspicion. However, the dash camera footage shows the driver extending his arm out the window and pointing ahead, indicating he intended to pull into an upcoming parking lot. (State’s Ex. 2). The driver then did exactly that. This is cooperative behavior, not evasion, and it has no nexus to criminal activity. The State also argued that the occupants’ departure from the Assembly View Apartments, which they characterized as a known drug area, contributed to reasonable suspicion. But driving through or departing from a particular neighborhood is not indicative of criminal activity. The Fourth Amendment does not permit officers to treat every person leaving a given area as a potential criminal. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (“An individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime”). Nor does the fact that a passenger gave a different name for the driver transform an otherwise innocuous traffic stop into a basis for suspecting drug activity. (Tr. p. 145, ll. 17 – 21). Finally, the State pointed to both occupants being on their cellphones. (Tr. p. 99, l. 14 – p. 101, l. 19). Using a cellphone is ubiquitous behavior with no nexus to criminal activity. It cannot contribute to reasonable suspicion.

Taken together, these factors amount to nothing more than a hunch that criminal activity was afoot. Hill was following his gut, not the evidence before him. The Fourth Amendment does not permit the continued detention of a driver for purposes of conducting a full-scale drug

investigation based on an officer's gut feeling. *See State v. Frasier*, 437 S.C. 625, 637, 879 S.E.2d 762, 768 (2022) (holding that repeating questions, noticing defendant's unzipped zipper, sweating, and being nervous were insufficient to support a reasonable suspicion to justify prolonging a traffic stop). Hill merely had a collection of innocent behaviors that, viewed under the totality of the circumstances, remain innocent. The trial court's finding of reasonable suspicion was error.

The timeline of the stop further underscores the constitutional violation. Deputy Hill abandoned the traffic purpose within approximately ninety seconds. (State's Ex. 3). He did not complete writing the traffic citation until near the thirty-minute mark, giving the appearance that he deliberately prolonged the stop while waiting for the K-9 unit. (Tr. p. 29, l. 13 – p. 32, l. 15). The K-9 unit did not arrive until approximately forty minutes after the initial stop. (Tr. p. 172, l. 24 – p. 173, l. 5). Continued detention of a driver during a traffic stop for questioning that is beyond the scope of the stop is illegal unless the officer has a reasonable suspicion of a serious crime. *See Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022). Because reasonable suspicion did not exist, the forty-minute detention was unconstitutional, and all evidence obtained as a result of the K-9 sniff should have been suppressed. "In law, the ends do not justify the means." *State v. Adams*, 409 S.C. 641, 654, 763 S.E.2d 341, 348 (2014) This Court should reverse.

The trial court erred by denying Mr. Przybylski's motion to suppress the evidence collected from his cell phone because the basis for the probable cause to search the cell phone was nothing more than the fact that drugs were found in Mr. Przybylski's car.

Relevant Facts

In addition to moving to suppress everything seized because of Deputy Hill's unconstitutional search of Mr. Przybylski's car, defense counsel also raised additional arguments to suppress the contents of Mr. Przybylski's cell phone. Defense counsel argued that the search warrant affidavit was based solely on the fact that drugs were found in the vehicle, and that under *State v. Gentile*, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007), the mere presence of drugs at one location does not establish probable cause to search a separate, constitutionally protected space like a cellphone. (Tr. p. 118, ll. 15 – 24).

The State responded that *Gentile* involved tying drugs found in vehicles to a separate house and was inapplicable to this case. (Tr. p. 118, l. 25 – p. 119, l. 19). The trial court denied the motion to suppress the cellphone evidence, finding that the search warrant was supported by probable cause because of the drugs found in the vehicle. The court found *Gentile* inapplicable. (Tr. p. 121, ll. 1 – 12).

The State introduced text messages taken from the Mr. Przybylski's cell phone that allegedly show him texting an unidentified number: "I just got pulled over," "And they're running my license," and "They are about to send the dogs out." The text messages also show the unidentified number texting "Do you have shit on you?" with Mr. Przybylski's alleged response showing "Yes." (Tr. p. 229, l. 20 – p. 231, l. 5; State's Ex. 12). Defense counsel renewed this motion at the close of the State's case. It was again denied. (Tr. p. 248, l. 18 – p. 249, l. 14).

Legal Framework

“A search or seizure is reasonable under the Fourth Amendment when it is authorized by a warrant that is supported by probable cause.” *State v. Dill*, 423 S.C. 534, 542, 816 S.E.2d 557, 562 (2018) (citing *State v. Kinloch*, 410 S.C. 612, 616, 767 S.E.2d 153, 155 (2014)). “An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause.” *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (citing *State v. Viard*, 276 S.C. 147, 276 S.E.2d 531 (1981)). “Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient.” *Smith*, 301 S.C. at 373, 392 S.E.2d at 183. Determining whether probable cause exists to support a search warrant, a magistrate must “make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. King*, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002) (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

In *Riley v. California*, the Supreme Court considered whether a cell phone could be searched incident to arrest without a search warrant and ultimately concluded that it cannot. 573 US 373 (2014). The *Riley* Court held that a smartphone is entitled to the constitutional protections guaranteed by the requirements of a search warrant. *Id.* at 386. In reaching this conclusion, the *Riley* Court highlighted why government searches of smartphones are so intrusive. A smartphone search “typically expose[s] to the government far more than the most exhaustive search of a house,” including “a broad array of private information never found in a home in any form.” *Id.* at 396-97. Smartphones are “a pervasive and insistent part of daily life” and “an important feature of human anatomy.” *Id.* at 385. They “collect[] in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in

combination than any isolated record.” *Id.* at 394. Smartphone searches “implicate privacy concerns far beyond those implicated” by other searches. *Id.* “A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form.” *Id.* at 396-97.

Discussion

The trial court erred by denying Mr. Przybylski’s motion to suppress the evidence obtained from his cellphone because the search warrant affidavit lacked probable cause. The affidavit’s sole basis for searching the phone was the discovery of drugs in the vehicle. This fact alone does not establish a fair probability that evidence of a crime would be found on Mr. Przybylski’s cellphone.

A magistrate evaluating a search warrant must “make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *King*, 349 S.C. at 150, 561 S.E.2d at 644 (citing *Illinois v. Gates*, 462 U.S. 213 (1983)). The operative phrase is “a particular place.” The affidavit must establish a nexus between the criminal activity and the specific location to be searched. Finding drugs in a car establishes that drugs were in the car. It says nothing about whether evidence of a crime will be found on a cellphone.

The trial court in this case found *State v. Gentile*, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007), inapplicable. Respectfully, *Gentile* is at least instructive on the facts of this case. In *Gentile*, this Court held that the discovery of drugs in a vehicle that had left a residence just minutes earlier did not establish probable cause to search the residence. *Id.* at 514, 646 S.E.2d at 174. The State distinguished *Gentile* by arguing it involved tying drugs in a vehicle to a separate residence. (Tr. p. 118, l. 25 – p. 119, l. 19). But the underlying principle is the same: the discovery of drugs in one constitutionally protected space does not by itself provide probable cause to search another

constitutionally protected space. A cellphone is a constitutionally protected space. *See Riley*, 573 US at 386. If finding drugs in a car does not establish probable cause to search a house that the car departed from just minute earlier, it also does not establish probable cause to search a cellphone.

The warrant affidavit here contained no facts suggesting that Mr. Przybylski's cellphone contained evidence of drug trafficking. There was no information about text messages, phone calls, or any communication related to drugs. There was no testimony or evidence that Mr. Przybylski had used his phone in connection with any criminal activity during the stop or otherwise. The affidavit relied solely on the conclusory assertion that because drugs were found in the vehicle, the phone would contain evidence of drug activity. (Tr. p. 118, ll. 15 – 24).

Under *Smith*, “[m]ere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient.” 301 S.C. at 373, 392 S.E.2d at 183. As our Supreme Court found in *Smith*, an affidavit which failed to set forth the facts as to why police believed the defendant had committed the robbery they were investigating was insufficient to establish probable cause. *Id.* Here there is nothing to support why police believed Mr. Przybylski's cellphone would have evidence of drug activity on it. Accordingly, the trial court erred in allowing the introduction of the incriminating text messages found pursuant to the defective search warrant.

The trial court's error was also prejudicial. The cellphone evidence included text messages in which Mr. Przybylski allegedly acknowledged having drugs. (Tr. p. 229, l. 20 – p. 231, l. 5; State's Ex. 12). Without this evidence, the State's case rested on drugs found in a backpack in a vehicle with two occupants, neither of whom claimed responsibility, and the testimony of a co-defendant who admitted he was testifying in hopes of leniency. (Tr. p. 198, l. 1 – p. 199, l. 6; Tr. p. 224, ll. 1 – 13). The cellphone evidence likely tipped the scales against Mr. Przybylski. This Court should reverse the trial court's denial of the motion to suppress and remand for a new trial.

The trial court erred by prohibiting Mr. Przybylski from impeaching the testifying co-defendant with his prior inconsistent statement made to the assistant solicitor that he was the owner of the backpack where the drugs were found.

Relevant Facts

Before trial, the State disclosed to defense counsel an email from the assistant solicitor which summarized a meeting with co-defendant Robert Scheffler. (Court's Ex. 4). The email stated that Scheffler reported having "a writing pad and some pencils, and a black backpack with him that were in the car." (Court's Ex. 4).

At trial, Scheffler testified on direct examination that when he got in Mr. Przybylski's vehicle, he had with him "my drawing pad, my pencils, and my jacket." (Tr. p. 200, ll. 4 – 9). He made no mention of a backpack. On cross-examination, defense counsel asked Scheffler whether he had a black backpack when he got in the car. Scheffler responded that he had "my jacket," his "sketchpad," and his "drawing pencils." (Tr. p. 206, ll. 16 – 22). When confronted with the fact that he had told the prosecutors he had a black backpack, Scheffler stated, "I could have said black backpack. I may have." (Tr. p. 206, l. 23 – p. 207, l. 3). He denied that the gray and black backpack found behind the driver's seat was his. (Tr. p. 207, ll. 13 – 24). When pressed further, Scheffler ultimately stated, "From what I can remember, I did not" tell the prosecutors he had a backpack. (Tr. p. 212, l. 18 – p. 213, l. 6).

Outside the presence of the jury, defense counsel moved to impeach Scheffler with extrinsic evidence of his prior inconsistent statement. Specifically, the email from the assistant solicitor. (Tr. p. 213, l. 14 – p. 214, l. 4). Counsel argued that the email was written by the solicitor who was present at the meeting and summarized what Scheffler said, and that the email had not been

corrected before trial. Counsel noted that the only witnesses to the statement were the two prosecutors and Scheffler's attorney, Susannah Ross. The prosecutors could not be called because they were advocates in the case, and Ross could not be called due to attorney-client privilege. (Tr. p. 213, l. 14 – p. 214, l. 4). The State opposed the use of extrinsic evidence, arguing that the email was merely a “courtesy” summary, not a formal statement, and that Scheffler had already been given the opportunity to explain the inconsistency. (Tr. p. 214, ll. 9 – 19).

The trial court allowed a proffer of Scheffler's attorney, Susannah Ross, outside the jury's presence to determine what she recalled. (Tr. p. 219, ll. 6 – 16). Ross testified that she did not recall Scheffler saying he had a black backpack, and that her notes from the meeting did not mention one. (Tr. p. 219, l. 25 – p. 220, l. 13). The trial court ruled that it would not allow defense counsel to introduce extrinsic evidence of the prior inconsistent statement. The court reasoned that Scheffler had “acknowledged that he may have said black backpack,” that defense counsel had already elicited testimony from multiple deputies that no additional backpack was found in the vehicle, and that the credibility determination was for the jury. (Tr. p. 220, l. 20 – p. 221, l. 2).

Legal Framework

Rule 613(b) of the South Carolina Rules of Evidence allows for the admission of extrinsic evidence of a prior inconsistent statement when the witness has been “advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement.” If the witness denies making the statement or does not admit to making the statement, the extrinsic evidence of the statement is admissible. Rule 613(b), SCRE; *See also State v. Bixby*, 388 S.C. 528, 551, 698 S.E.2d 572, 584 (2010) (finding the trial court did not err in allowing extrinsic evidence of a prior inconsistent

statement where the series of questions asked of the witness identified the substance of the statement and the time, place, and to whom it was made).

“In determining whether a witness has admitted making a prior inconsistent statement and thereby obviated the need for extrinsic proof, the courts of our state and other jurisdictions have held that the witness must admit making the prior statement unequivocally and without qualification.” *State v. Blalock*, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003). “[W]here the witness has responded with *anything less than an unequivocal admission*, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement.” *Id.* at 80, 591 S.E.2d at 636. (emphasis added).

Discussion

The trial court erred by prohibiting defense counsel from introducing extrinsic evidence of Scheffler’s prior inconsistent statement under Rule 613(b), SCRE. The defense laid proper foundation, the witness did not admit to making the statement, and the extrinsic evidence was necessary to impeach Scheffler.

Rule 613(b) requires that the witness be “advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and [be] given the opportunity to explain or deny the statement.” Defense counsel satisfied every element of this foundation. Counsel confronted Scheffler with the substance of his prior statement, that he told prosecutors he had a black backpack when he got in Mr. Przybylski’s vehicle. (Tr. p. 206, ll. 16 – 22). Counsel identified when and where the statement was made and to whom. (Tr. p. 206, l. 23 – p. 207, l. 3). Scheffler was given ample opportunity to explain or deny. This foundation mirrors the foundation approved in *Bixby*, where the Court found no error in admitting extrinsic evidence

of a prior inconsistent statement after the witness was asked about the substance, time, place, and person to whom the statement was made. 388 S.C. at 550-53, 698 S.E.2d at 584-85.

Critically, Scheffler did not unequivocally and without qualification admit to making the statement that the backpack containing the drugs was his. When first confronted, he equivocated: “I could have said black backpack. I may have.” (Tr. p. 206, l. 23 – p. 207, l. 3). He denied that the gray and black backpack found behind the driver’s seat was his. (Tr. p. 207, ll. 13 – 24). When pressed further, he ultimately stated, “From what I can remember, I did not” tell the prosecutors he had a backpack. (Tr. p. 212, l. 18 – p. 213, l. 6). This is precisely the situation Rule 613(b) addresses. When a witness does not admit, “unequivocally and without qualification,” to making a prior inconsistent statement, extrinsic evidence of that statement is admissible. *See Blalock*, 357 S.C. at 80, 591 S.E.2d at 635; *see also State v. Moses*, 390 S.C. 502, 523, 702 S.E.2d 395, 406 (Ct. App. 2010) (holding that extrinsic evidence of a prior inconsistent statement was admissible where the witness testified she “could not remember” making the prior statement). The rule exists for the exact situation that happened here. A witness has refused to acknowledge their prior inconsistent statement thus requiring extrinsic evidence to effectively impeach the witness. This allows the jury to resolve the credibility dispute when the witness’ own testimony is inadequate to do so.

The trial court’s reasons for excluding the evidence do not withstand scrutiny. First, the court reasoned that Scheffler had “acknowledged that he may have said black backpack.” (Tr. p. 220, l. 20 – p. 221, l. 2). But “I may have” is equivocation, not an admission. If a witness could defeat impeachment by extrinsic evidence simply by saying “I may have,” Rule 613(b)’s provision for extrinsic evidence would be rendered meaningless. The rule contemplates a clear binary: the witness either admits making the statement or does not. Anything short of an unequivocal admission opens the door to extrinsic proof.

The trial court also noted that defense counsel had already elicited testimony from multiple deputies that no additional backpack was found in the vehicle. While true, this evidence is not a substitute for Scheffler's own prior statement that the backpack belonged to Scheffler and not Mr. Przybylski. The deputies' testimony establishes that no second backpack was found. But Scheffler's prior statement that he brought a black backpack to the car goes directly to ownership of the backpack where the drugs were found. These are distinct evidentiary points. The prior inconsistent statement had independent impeachment value that could not be replicated by other testimony. Only Scheffler's own words to the prosecutors could demonstrate that he previously claimed to have brought a backpack to the car and then changed his story at trial.

The trial court also stated that the credibility determination was for the jury. This reasoning supports admission of the extrinsic evidence, not exclusion. The jury needed all available evidence to make that credibility determination. By excluding the extrinsic evidence of Scheffler's prior statement, the court deprived the jury of a critical tool for evaluating his credibility on the most contested issue in the case—who had possession of the drugs.

The trial court's error was not harmless. Ownership of the backpack was the central factual dispute at trial. The drugs were found in a backpack behind the driver's seat of a vehicle with two occupants. Neither occupant claimed the drugs. The State's case depended heavily on Scheffler's testimony; a co-defendant who admitted he was hoping for leniency. (Tr. p. 198, l. 1 – p. 199, l. 6; Tr. p. 224, ll. 1 – 13). If the jury knew that Scheffler previously told prosecutors he brought the black backpack to the car, contradicting his trial testimony, it would have likely changed the jury's assessment of who owned the backpack and, by extension, who possessed the drugs. Excluding this evidence deprived Mr. Przybylski of his ability to mount an effective defense on the only genuinely contested factual issue at trial. This Court should reverse and remand for a new trial.

CONCLUSION

By reason of the foregoing argument, Mr. Przybylski's conviction and sentence should be reversed, and this case remanded to the Greenville County Court of General Sessions for a new trial with instructions for the trial court to suppress the evidence seized pursuant to the search warrant. In the alternative, this Court should reverse Mr. Przybylski's conviction and sentence and remand for a new trial due to the trial court's erroneous exclusion of necessary impeachment evidence.

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