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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Chesterfield County
The Honorable Paul M. Burch, Circuit Court Judge
Appellate Case No. 2026-001204

THE STATE,

RESPONDENT

v.

JAMES MONROE BROWN,

PETITIONER

Opinion No. 6143 (S.C. Ct. App. Filed March 25, 2026)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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PETITIONER'S QUESTION PRESENTED

1. Did the Court of Appeals err in upholding the trial judge's denial of the motion to suppress the defective search warrant in the case per the rationale that all requirements under *Franks* were not met in the case because to the contrary, the defense satisfied the two-pronged criteria by establishing via a preponderance of the evidence that the false information included in the affidavit was procured from police recklessness/deliberateness, and that there was insufficient probable cause information in the warrant affidavit sans the falsehood presented therein, all of which meant that the denial of the evidence seized as a result of the execution of the search warrant constituted reversible error in this case?

RESPONDENT'S COUNTER STATEMENT TO QUESTION PRESENTED

1. Did the Court of Appeals err in deciding that the search warrant issued for obtaining the phone records of the Petitioner was valid because the information placed on the warrant and testimony from law enforcement provided sufficient probable cause, and Petitioner failed to prove by a preponderance of the evidence that the false information placed on the warrant was intentional; thereby, failing to satisfy *Franks*, the warrant affidavit was done in good faith; therefore, making the search warrant valid regardless of the false information pursuant to *U.S. v. Leon*?

STATEMENT OF THE CASE

On January 21, 2017, appellant James M. Brown (“Petitioner”), along with Jamarcus Sellers, Brenton Davis, and others, murdered Mr. James Henderson, Jr. outside of his home in Chesterfield County. The perpetrators were all from Marlboro County. Petitioner, Sellers, Davis, and several others, were arrested a few days after the crime and charged with Henderson’s murder. Petitioner was later indicted by the Chesterfield County grand for jury murder (2018-GS-13-0424). On April 21, 2021, Petitioner along with his trial counsel Grant Smaldone appeared, before the Honorable Paul M. Burch for trial.¹ Appearing on behalf of the State of South Carolina was Deputy Solicitor Kennard Redmond, of the Fourth Circuit Solicitor’s Office. (R. 1-6). On April 22, 2021, the jury found Petitioner guilty of murder. (R. p. 346). After the reading of the verdict the Petitioner appeared before the trial court for sentencing. The trial court proceeded to sentence the Petitioner to a thirty-five (35) year period of incarceration. (R. 361). While serving his sentence the Petitioner filed a timely notice of appeal. Within this appeal Petitioner raised the following two issues: (1) Whether CSLI/phone records were admissible and (2) whether the trial judge erred in denying Petitioner’s motion for a directed verdict.

On May 6, 2025, each party appeared before the Court of Appeals panel of Judges Konduros, Vinson, and McDonald of the South Carolina Court of Appeals for an argument regarding the issues raised by the Petitioner. On March 25, 2026, the Court of Appeals issued a published opinion affirming the decision of the trial court. *State v. Brown*, 447 S.C. 617, 929 S.E.2d 415 (2026). Judges Konduros and Vinson decided that the trial court did not err in the denial of

¹ Co-defendant Jamarcus Sellers was cooperating with the State but was murdered before trial after his identity and cooperation was released through discovery. Brenton Davis pled guilty to Voluntary Manslaughter before trial but refused to cooperate or testify in this case. Two (2) other potential witnesses were also murdered before Petitioner’s trial. (R. 352-58).

Petitioner’s motion to suppress nor the denial of the motion for a directed verdict. Judge McDonald wrote a concurring opinion deciding that law enforcement acted in good faith. Judge McDonald also found that since this search warrant was sought seventeen months prior to the *Carpenter* decision, the two-day phone records were a good faith attempt to obtain a proper warrant during the pre-*Carpenter* era when a warrant was not required. *Brown*, 447 S.C. at 648, 929 S.E.2d at 431.

WHY CERTIORARI SHOULD BE DENIED

The Supreme Court reviews the Court of Appeals by writ of certiorari only where special reasons to justify the exercise of that power. *Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 544 (2000). Pursuant to Rules 242 of the South Carolina Rules of the Appellate Court, “a writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review in general, indicates the character of reasons which will be considered:

1. Where there are novel questions of law;
2. Where there is a dissent in the decision of the Court of Appeals;
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
4. Where substantial constitutional issues are directly involved;
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242, SCACR.

In reviewing these criteria none applies to the present case. The Court of Appeals properly and unanimously affirmed the decision of the trial court.² There have also been numerous South Carolina opinions relating to search warrants and what establishes probable cause. So this is not a novel question of law.

The question in this case relates to the affidavit provided by law enforcement to the Magistrate in order to obtain the cell phone records of the Petitioner. Within this affidavit there was a mistake that was acknowledged by the Solicitor that the Petitioner called the Victim on the day of the murder. They also acknowledged that this was included accidentally. According to the Court of Appeals, the Petitioner never offered any proof that this false information was added intentionally or recklessly. The Court of Appeals also ruled that this crime occurred prior to *Carpenter*; therefore a warrant was not even required. The Petitioner could not prove that this mistake was intentional. It occurred in good faith making the warrant valid pursuant to *U.S. v. Leon*.

The decision of the Court of Appeals was not in conflict with any prior decision made by this Court. There was no decision made by the Court of Appeals that conflicted with a decision made by the United States Supreme Court, and this decision was unanimous. The Court of Appeals decision was lawful, so their decision should not be subject to review.

STATEMENT OF FACTS

On the night of January 21, 2017, at approximately 11:00 p.m., James Henderson, Jr. (“Victim”), was shot in front of his home in Chesterfield County by a gang of men from Marlboro County, one of the men present was the Petitioner. The men confronted Victim after first calling

² The Petitioner argues that Judge McDonald wrote a dissenting opinion. However, within the opinion it’s clear that Judge McDonald concurred with the decision of the other two appellant court judges.

him out of his home, where he had been with his girlfriend, eight-year-old son, and five-month-old infant son. After going outside his home to face the gang of men in his yard, the Victim was shot four times. At least three, possibly four firearms were involved in this shooting. This finding was based on the fired shell casings found at the scene and bullets recovered at the autopsy. Victim was able to flee on foot away from his home before he died from blood loss in a wooded area near Hwy. 9. Victim's phone was later found in the path he took fleeing from the gang. The Victim was carrying a firearm for his protection; however, he was never able to fire the gun as he was shot first.³ The Victim's gun was recovered in the path where he ran attempting to escape. (R. 41-62; 64-91; 93-103; 107-33; 134-279; 286-315; State's Ex. 17, 18, 25, 35, 36 & 37).

The events leading to the Victim's murder began with phone calls and text messages earlier in the day from some of the perpetrators of the murder; they continued into the evening of the murder. The perpetrators, including Petitioner, all lived near Bennettsville in neighboring Marlboro County. Victim lived in a mobile home park off of Hillian-Edwards Road between Cheraw and the City of Chesterfield in what was considered the Cheraw section of Chesterfield County. That afternoon, several of the perpetrators called or "texted" the Victim to come to Marlboro County in order to meet with them, the Victim refused. A text from one of the perpetrators, Brenton Davis ("Davis"), to the Victim questioned why he would not come to Marlboro County and again directed Victim to come. The Victim again refused. (R. 195-201; 204-07; State's Ex. 2-4, 17, 30, 32-37).

Petitioner then called the Victim's first cousin, Kasean Smalls ("Smalls"), known by the nickname "S-Dot." This call occurred the night of Victim's murder at 8:24 p.m. At 8:27 p.m., Smalls texted Victim: "Call me ASAP." Smalls then called Victim at 8:28 p.m. Victim called

³ Victim's gun was a semi-automatic pistol which contained bullets in the magazine but none in the firing chamber. Additionally, Victim's gun did not match any of the fired shell casings or fired bullets found at the crime scene and autopsy. (R. 221-23; 183-84; 195; 153-72; 207-08).

Smalls back at 8:35 p.m. Victim also called appellant's co-defendant Davis at 8:35 p.m. Davis then called Victim back at 8:36 p.m. Smalls "texted" Victim the Petitioner's phone number at 8:37 p.m., but Victim never called the Petitioner. Victim called Smalls again at 9:12 p.m., and Davis at 9:21 p.m. (R. 210-12 ; State's Ex. 4, 17, 33-37).

The evidence introduced at trial showed Petitioner, Jamarcus Sellers ("Sellers"), Davis, and several other men drove in two different cars from the Bennettsville area of Marlboro County to the Victim's mobile home park in Chesterfield County. This drive was approximately 20 miles. (R. 93-104; 107-133; 210-11; State's Ex. 36-38).

Upon entering the mobile home park, Petitioner and his fellow perpetrators first mistakenly went to the wrong home. Around 10:30 p.m., Shameika Ingram ("Ingram"), a neighbor, had gone to bed and while falling asleep she was awakened by car lights and a car door slamming in front of her home. At first, she believed it was some of her relatives coming home from an outing. She told her boyfriend, Thomas Lyles ("Thomas"), to get out of bed and let the relatives inside. Before Thomas opened the front door, Ingram could hear men outside calling for the Victim to come out of the house. The men called out three times aggressively, "S.B. [Victim], bring your ass outside." Thomas told Ingram to get out of bed, because he wanted her to see these men. Thomas opened the front door and went outside to talk to the men who were yelling. Ingram got up and looked out the window and saw that there were five or six men standing in front of a dark car parked in front of her home. Ingram could see several of the men carrying firearms openly. Petitioner was one of the individuals talking to Thomas. Petitioner was six feet away from Ingram so she could see him out of the window. (R. 64-91; 107-133).

Ingram testified that the men standing in her yard were loading their weapons while speaking with Thomas. After the murder, two intact shotgun shells were recovered near Ingram's

home. (R. 64-91; 107-133; State's Ex 26). These men accused Thomas of being the man they were looking for. Thomas tried to explain to these men that he was not the Victim. According to Ingram, although she could not see a gun on Petitioner, he was with the armed men speaking to Thomas. For a while, these men failed to believe Thomas, eventually he was able to convince them, he was not the Victim. Thomas revealed to these men that the Victim lived in another trailer further down the road. Most of these men, including the Petitioner, got back into their vehicle and pulled off. Two of the men walked in front of the cars as it pulled over to Victim's home. (R. 64-91; 107-33). One car parked in Victim's yard with the lights illuminating on the Victim's home, while the second car road passed and pulled to the back of the Victim's home. However, no one got out of this car. (R. 64-91; 107-33).

All of the men in the cars up front, including Petitioner, got out of the car and stood in the Victim's yard. Several men were carrying firearms openly. Ingram could not tell if Petitioner was armed. She did testify that the Petitioner was definitely part of the group, and participating in what they were doing. Ingram also stated that she could see Victim inside his home in front of his bedroom window. (R. 64-91; 107-33).

Victim's girlfriend, Monique Ingram ("Monique") testified that Victim received several threatening phone calls that day, however, she could not tell who the calls were coming from. Later, about 10:30 or 11:00 p.m., she heard a car outside their home.

Ingram, continued to watch what was occurring and witnessed Victim coming out of his home. When the Victim came out of the house, he presented himself before these men. Ingram then heard someone say something and the word "nigga." Ingram heard gunshots and saw Victim fleeing on foot. Ingram thought someone was chasing the Victim. (R. 64-91; 107-33). All of the men, including Petitioner, fled the scene.

Police were dispatched to the mobile home at 11:03 p.m. on a call of “shots fired.” When police arrived, Victim could not be found. After a thorough search, Victim was found some distance from his home near Hwy. 9. Victim was found deceased in a wooded area where he had fled after being shot. (R. 176-82; 64-92; 93-104; 107-33).

While processing the scene, police found six fired shell casings. Another fired bullet shell casing was also found nearby. These seven recovered fired shell casings were from handguns. At the autopsy, the pathologist determined that Victim had been shot 4 times in the back of his body.

Police spoke with Ingram and Monique at the scene along with other witnesses in the mobile home park. Ingram was shown a series of pictures from social media, and she identified Petitioner’s photograph as one of the men involved in the murder. She also identified Petitioner in court as one of the perpetrators. From interviewing witnesses and overhearing discussions of others at the mobile home park, police immediately identified and obtained the names of several suspects all from Bennettsville, including Petitioner, Sellers, and Davis. Police immediately notified Bennettsville police and began obtaining background information on Petitioner and his co-defendants and tried to speak with all three co-defendants early the following morning. (R. 41-62; 64-91; 107-33; 93-104; 174-90).

As part of that investigation, police found Victim’s cell phone in the area of his flight, they were able to extract Victim’s in-coming and outgoing phone calls and texts. Based on the investigation and interviews, police knew Victim had received a series of threatening texts and phone calls the afternoon and night of the crime. Based on what was found in Victim’s cell phone, police also obtained cell-site location information (CSLI) and cell phone records of the Petitioner for just two days from Verizon. Police actually obtained Davis’s phone when he was arrested and were able to access it [perform an extraction] and obtained his phone records for more than a week.

Police also obtained CSLI on Davis's phone for the night of the murder. Police were never able to locate Petitioner's phone. (R. 193-201; 205-19; 223-26; 229; 231-33; 235-41; 242-79; 280; State's Ex. 2, 3, 4, 17, 27; 28, 32, 33, 34, 35, 36, 37).

The CSLI for January 21st, showed Petitioner left the area of Bennettsville, in Marlboro County, around 10:30 p.m. and traveled to the area of Victim's mobile home park arriving around 10:48 p.m. This was a trip of approximately 20 miles. Petitioner's co-defendant Davis's CSLI showed Davis's phone also doing the same thing. It traveled from Marlboro County and ended up in the vicinity of Victim's mobile home park at approximately 10:48 p.m. (R. 196-201; 204-19; 357-58; 268-98; 304-05; State's Ex. 2, 3, 4, 17, 30, 32-37).

During the trip from Bennettsville to Victim's mobile home park, Davis and Petitioner, who knew each other well, did not converse over the phone or text at all. This is consistent with them riding together to Victim's home. (R. 215-17). However, Petitioner and another co-defendant, Sellers, conversed by phone or text during almost the entire trip to Victim's home, indicating Sellers was in the second vehicle at least until they got near the mobile home park. (R. 214-15; 234-81). Petitioner called Sellers at 10:34 p.m., 10:45 p.m., and 10:50 p.m. the night of the murder; this would have been during the trip or as they arrived in the mobile home park or shortly thereafter. (R. 214, ln. 22 – 215, ln. 22; 234-81). Victim was murdered around 11:00 p.m. Police received the 911 call of shots fired at 11:03. p.m. (R. 42).

After the shooting occurred, CSLI and records revealed that Petitioner's phone left the area of Victim's mobile home park and returned to near Bennettsville. (R. 234-81; State's Ex. 3, 4, 37). Petitioner called Sellers again at 11:23 p.m. The last call between Petitioner and Sellers was at 10:50 p.m. The time period between 10:50 p.m. and 11:23 p.m. was the time period when Victim was murdered. (R. 215).

When Petitioner was questioned about the murder by police, he denied ever being in Chesterfield County the night of the crime or even near Victim's home. He claimed he was at a night club in Marlboro County. When police investigated his claim, they determined that this was a false alibi. (R. 186-94; 218; 226-27; State's 29). During his interview, Petitioner also gave police a false cell-phone number as well. (R. 186-90; 193; 217, ll. 15-19; State's Ex. 29). Police only determined Petitioner's correct phone number by interviewing his girlfriend. (R. 190; 193). Petitioner also falsely told police he had recently lost his cell phone the day of Victim's murder. (R. 193; 199; 217; State's Ex. 29, 3 & 4; R. 202-04). His cell phone records and calls showed he did not lose his phone the day of the murder. (R. 204-05). Police were never able to locate Petitioner's phone and as a result obtained subscriber information, two days of phone records, and two days of CSLI for Petitioner's phone from Verizon, which incriminated him. (R. 193-218; 242-79; State's Ex. 4 & 37).

ARGUMENT

- 1. The Court of Appeals did not err in deciding that the information on the face of the affidavit along with the testimony made by law enforcement provided sufficient probable cause for a search warrant for the Plaintiff's phone records. Petitioner also never proved beyond a preponderance of the evidence as provided in *Franks v. Delaware* that this false information was placed in the warrant affidavit intentionally; therefore since this search warrant was sought before the *Carpenter* decision it was done in good faith and lawful pursuant to *U.S. v. Leon*.**

The decision by the Court of Appeals was concluded with the majority determining that the trial judge did not err in the denial of the Petitioner's motion to suppress. The search warrant was valid because the information in the affidavit along with testimony from Captain Wayne Jordan informed the Magistrate that the phone number of the Petitioner was "associated with" sending numerous threats to the Victim's phone was found as part of the investigation. *State v. Brown*, 447 S.C. 617, 630, 929 S.E.2d 415, 422 (2026). The majority also decided that the Petitioner failed to prove beyond a preponderance of the evidence that the mistake listed within

the affidavit regarding Petitioner phoning the Victim prior to the murder was deliberate or a reckless disregard of the truth which must be proven by the Petitioner pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978).⁴

Judge McDonald, in the concurring opinion, determined that although there was not enough within the affidavit to establish probable cause, since this was decided some seventeen months prior to the United States Supreme Court decision in *Carpenter v. United States*, 585 U.S. 296, 138 S.Ct. 2206 (2018), law enforcement acted in good faith. Under *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984) this warrant was valid under the good faith exception.

The Respondent offers to this Court that there was no dissent regarding the result of this case. All three judges on the panel realized that the trial court did not err in allowing the evidence found from this search warrant to be admissible. Since there was no error committed by the trial court the decision of the court of appeals should not be subject to review. This petition for certiorari should be subject to dismissal.

Validity of the Search Warrant

The initial affidavit presented to the Magistrate stated, “That on January 21st, 2017 [Victim] was shot and killed at his home in Cheraw, South Carolina and during this incident he received several phone calls from the target number minutes before his murder. This is an ongoing Murder investigation.” *Brown*, 447 S.C. at 630, 929 S.E.2d at 422. During trial the State admitted that the last portion regarding the Victim receiving several calls from the Petitioner prior to the murder was

⁴ First, to mandate an evidentiary hearing, there must be “allegations of deliberate falsehood or of reckless disregard for the truth [as to statements included in the warrant affidavit], and those allegations must be accompanied by an offer of proof.” At the hearing, the accused has the burden of proving the allegations of perjury or reckless disregard for the truth by a preponderance of the evidence. *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S.Ct.2d 2674 (1978).

false. There was evidence that the number of the Petitioner was sent to the Victim for him to call prior to the murder. This affidavit was supported by testimony by Captain Jordan. He informed the Magistrate that, the phone number on the warrant was “associated with” sending numerous threats to Victim’s phone number. *Id.* This was never disputed by the Petitioner because the phone number of the Petitioner was part of the texting stream between the Victim and Petitioner’s co-defendants. Law enforcement also sought “direct connect details, call details, caller identification, and cellular site records.” *Id.*, 447 S.C. at 629, 929 S.E.2d at 421. From the records that were obtained as part of this search warrant cell phone data from the Petitioner’s phone revealed that he was in the vicinity of the crime location at the time of the murder.

Pursuant to Section 17-13-140 of the South Carolina Code of Laws, search warrants can only be issued upon an affidavit shown to a Magistrate, establishing the grounds for a warrant. Section 17-13-140 of the South Carolina Code of Laws specifically state:

Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court or record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize...(3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense...

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer above mentioned is satisfied that the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant...

S.C. Code Ann. §17-13-140 (1976).

The search warrant affidavit did not provide sufficient probable cause until oral testimony was added. Sworn oral testimony is permissible to supplement search warrant affidavits that are facially

insufficient to establish probable cause. *State v. Crummey*, 443 S.C. 94, 107, 902 S.E.2d 391, 398 (2024), *quoting*, *State v. Dill*, 423 S.C. 534, 542, 816 S.E.2d 557, 562 (2018). During the suppression hearing Captain Jordan testified that he informed the magistrate under sworn testimony that the Petitioner's number was "associated with" numerous calls made to the Victim on the day of the murder. The cousin of the Victim sent a text of the Petitioner's number to the Victim on the day of the murder. So that statement was truthful.

During the suppression hearing Petitioner accused the State of purposely lying to Magistrate in order to establish probable cause for the issuance of the search warrant. If there is an allegation of deceit for the issuance of a search warrant the defendant is allowed a hearing pursuant to the United States Supreme Court decision of *Franks v. Delaware*. In *Franks* the United States Supreme Court determined,

When the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment as incorporated in the Fourteenth Amendment, requires that a hearing be held at the defendant's request.

Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 2676 (1978).

Franks also states that if, "after a hearing a defendant establishes by a preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided and the fruits of the search excluded from the trial." *Franks*, 438 U.S. at 155, 98 S.Ct. at 2676. The Court of Appeals properly found that the Petitioner never provided any evidence that the false language included within the affidavit was not in error but placed in the affidavit with the intent to deceive. Allegations of a deliberate or of a reckless falsehood for the truth must be accompanied by an offer of proof. *State*

v. Gore, 408 S.C. 237, 244, 758 S.E.2d 717, 721 (2014). The State admitted that there was false information placed in the affidavit, but it was not placed there purposefully.

Within their opinion the majority decided that Petitioner only demonstrated that the statement placed in the affidavit was false. But Petitioner failed to reveal that the information was placed in the affidavit intentionally or recklessly. The Court of Appeals found that Captain Jordan provided in the affidavit that the Victim received several phone calls minutes before he was shot and how the Petitioner's cell phone records would link him to the crime scene. *Petitioner*, 447 S.C. at 642, 929 S.E.2d at 428. The majority also found that the supplemental testimony stated that specific calls mentioned in the affidavit were associated with numerous threats to the Victim. *Id.*

The final ruling by the majority was that the information combined from the affidavit and testimony were sufficient to demonstrate probable cause. The majority also correctly determined that Petitioner failed to prove by a preponderance of the evidence that the mistakenly false information was knowingly and intentionally placed in the affidavit. Under *Franks* in order for the court to set aside the false information the Petitioner must prove that by a preponderance of the evidence that it was a deliberate or a reckless disregard for the truth. The Court of Appeals was correct in finding that the Petitioner failed to prove this by a preponderance of the evidence. The Petitioner only raised awareness that a false statement was admitted by the State, but it was deemed an accident which was cured by the testimony by Captain Jordan.

The majority had the opinion that the information in the affidavit combined with testimony was sufficient to determine probable cause. The trial court did not err in denying the Petitioner his motion to suppress.

Good Faith

Judge McDonald concurred in the result, and although in Judge McDonald's concurring opinion, she found there was insufficient probable cause for a search warrant, however, the requesting officers acted in good faith when acquiring the cell site location data. (CSLI). Judge McDonald correctly stated that the search warrant was obtained on January 24, 2017, some seventeen months before the *Carpenter* decision.⁵ This was during a period when search warrants for cell phone data was not necessary.

In *Carpenter* the United States Supreme Court held that individuals have a reasonable expectation of privacy in the record of their physical movements captured by historical cell site location information (CSLI) and that acquisition of more than seven days constitutes a "search" under the Fourth Amendment. Judge McDonald realized that the warrant that was obtained was done in good faith and since *Carpenter* was not decided until seventeen months after the records were obtained *Carpenter* never applied.

In *United States v. Leon*, the United States Supreme Court held, even when a search warrant affidavit fails to contain probable cause, the fruits of that warrant will not be suppressed where officers who executed the warrant relied on the search warrant in good faith. *U.S. v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984). The correct standard is whether a reasonably trained officer, in light of all circumstances, would have known that the search was illegal despite the magistrate's authorization. Judge McDonald in her concurring opinion stated that although the officers acted in good faith and stated that the fact that the information was obtained from Verizon some seventeen months before the *Carpenter* decision. Judge McDonald specifically wrote in her the concurring opinion the following:

⁵ *Carpenter* was decided on June 22, 2018.

The State persuasively argues that this warrant sought only two days of data and urges us to recognize law enforcement's good faith attempt to obtain a proper warrant during the pre-*Carpenter* era when no warrant was required.

I do agree with the state as to the application of the good faith exception to the exclusionary rule. Thus like the majority, I would affirm Brown's conviction and sentence.

Brown, 447 S.C. at 648-49, 929 S.E.2d at 431-32.

The validity of this search warrant, and being that the warrant was obtained in good faith prior to the *Carpenter* decision reveals that the petition for writ of certiorari is without merit. Therefore, the Respondent would request the decision of the Court of Appeals not be subject to review. This petition for certiorari should be subject to dismissal.

CONCLUSION

For the above stated reasons, Petitioner's convictions and sentences for murder, should stand. The affirmation made by the Court of Appeals should not be subject to review. The Respondent respectfully request this Court dismiss this petition for writ of certiorari.

Respectfully submitted,

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