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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Patrick C. Fant, III, Circuit Court Judge

Lower Court Case No. 2024-GS-23-05734

The State, Respondent,

v.

Travis Lee Douglass, Appellant.

Appellate Case No. 2024-001965

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

1.

The State’s arguments that the it had probable cause to search everything, that the general nature of the warrant was severable, and that law enforcement acted in good faith reliance on the warrant for Mr. Douglass’ cell phone cannot rescue the warrants that authorized the seizure of every bit of data on Mr. Douglass’ phone and records.

A. Probable cause to search a phone is not probable cause to seize all its contents.

The State largely abandons any claim that the warrants were particular. It argues instead that the “warrants properly authorized a *full search of Douglass’s phone* because there was probable cause to search the entire contents of the phone.” (BOR p. 11) (emphasis added). The State contends that a full search of the phone was justified because identity was the central issue and the crime was planned. (BOR pp. 11 – 16). That argument cannot be reconciled with *Riley* and *Carpenter*. As the *Riley* Court noted, a phone search “typically expose[s] to the government far more than the most exhaustive search of a house.” *Riley v. California*, 573 US 373, 396-97 (2014); *see also Carpenter v. United States*, 585 U.S. 296, 313 (2018) (noting the “seismic shifts in digital technology” that gave the government the ability to track everyone’s location for years). If the State’s argument is correct, every time the government has probable cause to believe a person has committed a serious crime, it can obtain a full search of their cell phone. A warrant authorizing a top-to-bottom search of the suspect’s entire digital life is entirely permissible under the State’s theory. That is the definition of a general warrant which the Fourth Amendment forbids.

The State’s attempt to distinguish *Taylor v. State*, 260 A.3d 602 (Del. 2021) and *Burns v. United States*, 235 A.3d 758 (D.C. 2020) on the ground that the suspect’s identity was known in those cases misreads both decisions. Neither turned on whether identity was disputed. *Taylor*

invalidated a warrant that was “[u]nlimited in time and scope,” just like the warrants at issue in this case. 260 A.3d at 616. In *Taylor*, it was the unlimited scope, not the strength of the identification, that made the warrant general. The *Burns* Court likewise held that probable cause to search for a few “narrow and discrete items of data” did not justify seizing the entire contents of the phone. 235 A.3d at 767. The State identifies no language in any case suggests that a contested identity enlarges the scope of a permissible search or diminishes the requirement that a search warrant be particular.

The State’s reliance on the principle that police may search “the entire area in which the object of the search may be found” goes too far in the context of cell phones. (BOR p. 12, quoting *State v. Cauthen*, 447 S.C. 45, 50, 923 S.E.2d 655, 658 (Ct. App. 2025)). That a phone stores data in many folders explains why officers may look in many folders for a particular item; it does not authorize them to seize and keep every item in every folder. The State equates the place to be searched (the phone’s memory) with the things to be seized (the data itself). The Fourth Amendment demands particularity as to both. And the State half-concedes the point, acknowledging that “[i]n some cases, a more limited warrant may be required.” (BOR p. 15). This is such a case: by their terms the warrants reached “[a]ll digital data that can be forensically retrieved” and yielded roughly fifty-six gigabytes of data. (R. 1230).

B. The overbroad clause was not severable, because the remainder was equally general.

The State argues that even if the “all digital data” clause was overbroad, it was severable from the warrants’ more specific descriptions. (BOR pp. 18–19). Severance, however, saves a warrant only where a valid, particular portion can be separated from an invalid one. This Court’s decision in *State v. Thompson* permits severance “[i]f there was probable cause to issue a search warrant describing particular items to be seized, and such items are found and those items alone

constitute the basis of the criminal charge.” 363 S.C. 192, 203, 609 S.E.2d 556, 562 (Ct. App. 2005) (quoting *People v. Mangialino*, 75 Misc. 2d 698, 706 (Cnty. Ct. 1973)). Likewise in *United States v. Cobb*, the Fourth Circuit severed a single offending phrase, “any and all evidence of any other crimes,” from a warrant that was otherwise particular. 970 F.3d 319, 331 (4th Cir. 2020).

Here there is no particular remainder to preserve. Strike “all digital data” and what is left is “[c]all logs,” “SMS/MMS messages and attached multimedia files,” “[e]-mails,” “[p]ictures, [v]ideos, [a]udio files and all ExIF information,” “internet history,” and “[a]ny account information . . . for any and all installed applications.” (R. 1230). This list itself is a search of the entire phone, untethered to any date, subject, sender, or recipient. Additionally, unlike in *Cobb*, the warrant here did not even limit the search with language such as “related to the attempted murder.” *Cobb*, 970 F.3d at 324 (warrant sought “[a]ny material associated with the homicide of Paul Dean Wilson Jr. stored” on the suspect’s computer). The warrant here simply sought *everything*. The remainder is a general warrant in its own right. Severing the umbrella clause changes nothing.

The State responds that the two pieces of evidence it actually used which were the location artifact placing Mr. Douglass’ phone at the crime scene and the video of Mr. Douglass walking on the beach fell within categories the warrants named (geotagged videos; GPS and WiFi information), rendering the “all digital data” clause “superfluous and severable.” (BOR pp. 18–19). That inverts this Court’s decision in *Thompson*. The categories the State points to are themselves boundless. Every video, all location information, for all time are sought. The challenged evidence was not pulled from any narrow, particular clause. It came from a fifty-six-gigabyte “full extraction” of the phone’s entire contents. *Thompson* presupposes that something particular survives severance. Here, nothing does.

C. The good-faith exception does not apply to warrants this broad, sought years after *Riley*.

The State invokes *United States v. Leon*, 468 U.S. 897 (1984) and argues that obtaining two warrants shows good faith. (BOR pp. 19–21). But *Leon* does not save a warrant “so facially deficient” that officers “cannot reasonably presume it to be valid.” 468 U.S. at 923. The *Burns* Court found that the “extreme[ly]” overbroad warrants could not be saved by the good-faith exception because they were issued “more than a year after . . . *Riley*,” and that “any reasonably well-trained police officer . . . would have known they were invalid.” 235 A.3d at 779. The warrants here were issued nearly a decade after *Riley* and years after *Carpenter*.

The State’s observation that police obtained a second warrant cuts against it. Both the May 2023 and March 2024 warrant authorized full extractions of the cell phone. The March 2024 warrant was no more particular than the first. In fact, the description of property sought sections are identical, both completely unlimited in scope. While the State points out that there was additional information in the probable cause section of the March 2024 search warrant, much of that additional information was obtained through the first unconstitutional search of the phone. (March 2024 SW).

Seeking a second, equally unlimited warrant does not demonstrate the objective reasonableness *Leon* requires; it repeats the same error. Nor does it matter, as the State says, that the ability to search narrowly “has nothing to do with” reliance on the warrant. (BOR p. 21). The undisputed fact that Cellebrite could limit the search by date, time, location, source, or keyword bears directly on whether reliance was objectively reasonable. Officers who know they can particularize, and who hold the tools to do so, cannot reasonably rely on a warrant that particularizes nothing.

Finally, the State suggests in a footnote that any challenge to the Verizon warrant is unpreserved. (BOR p. 22 n.3). It is not. Mr. Douglass moved to suppress the cell-phone searches and provided the trial court with a written memorandum in support of the motion. (R. 61, ll. 6 – 11). The memo argues that the search warrants of both the physical cell phone and the Verizon records were unconstitutionally overbroad and required suppression of the evidence obtained from them. (MISO Mot. to Suppress). The trial court ruled on both, finding that “both of the warrants” were “sufficiently particular and supported by probable cause.” (R. 75, ll. 4 – 13). Additionally, Counsel for Mr. Douglass specifically noted his continuing objection to this evidence and the trial court specifically acknowledged that “[i]t will be a standing objection so you don’t have to get up. And it is definitely covered in the record.” (R. 75, ll. 5 – 22). The objection to the Verizon records is preserved. This Court should reverse the trial judge’s ruling and remand with instructions to suppress the evidence seized from Mr. Douglass’ phone and Verizon records.

The State cannot establish the reliability of the iOS location artifact by relabeling it ‘experience-based’ or by invoking Apple’s corporate value.

A. *Graves* governs, and the location artifact is unreliable under any standard.

The State’s threshold move is to recharacterize Wilde’s testimony as ‘experience-based’ so as to avoid the *Council* and *White* reliability factors. Our Supreme Court’s decision in *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 735 S.E.2d 650 (2012) forecloses that escape. There, our Supreme Court treated the interpretation of data produced by computer software as technical because it “involves complex issues of computer science.” 401 S.C. at 81, 735 S.E.2d at 659. The State protests that *Graves* declined to label the testimony scientific and found it unreliable “under either standard.” (BOR p. 38 n.9). But the *Graves* Court went on to conclude that the defendants were entitled to summary judgment because the plaintiff failed to present a reliable expert. The Court reasoned that “[a]lthough we use computers in some form or fashion almost every day of our lives, the design and structure of the software they run is beyond the ordinary understanding and experience of laymen,” *Graves*, 401 S.C. at 81, 735 S.E.2d at 659. There can be no doubt that the testimony at issue in this case is scientific. And there is no peer review, no published validation, and no known error rate for iOS “learned location” artifacts. The trial court erred in allowing Wilde’s testimony because it was unreliable.

B. Apple’s market value and Google’s advertising revenue are not evidence of reliability.

Much of the State’s argument is devoted to Apple being “one of the world’s most advanced and highly-valued technological companies” and to Google paying Apple “billions of dollars every year in exchange for Apple installing Google as the default search engine in the browsers of new iPhones.” (BOR pp. 29–30). Corporate valuation is not a *Council* factor. That a company is

profitable says nothing about whether a particular stored artifact reliably places a phone at a location at a given time. The State would have this Court believe that because large corporations pay large sums of money on a particular thing, that thing must be good. That is an assertion that should be emphatically rejected by this Court—especially in a criminal case where a person’s liberty is at stake. The State’s appeal to corporate pedigree underscores the absence of what actually matters: peer review, a known error rate, and independent validation.

The purpose of the data confirms the point. As the defense expert explained, Apple generates this location information for *advertising, not forensic, purposes*. Apple and Google do not use this data as a criminal investigative tool but to “harvest as much information about the customer to turn into money.” (R. 1082, ll. 9 – 19). Targeted advertising and traffic routing do not require courtroom-grade certainty about whether a phone sat at a specific address during a specific three-hour window.

C. The State conflates reliable CSLI with the unproven iOS artifact at issue.

The State’s principal South Carolina authorities—*State v. Warner*, 430 S.C. 76, 842 S.E.2d 361 (Ct. App. 2020), *State v. Franks*, 432 S.C. 58, 849 S.E.2d 580 (Ct. App. 2020), and *State v. Young*, 432 S.C. 535, 854 S.E.2d 615 (Ct. App. 2020)—all concern cell-site location information or cellular mapping, the reliability of which is well established. The artifact here is different in kind. Both experts agreed that cell-tower RTT data is “by far the most reliable” source of location information. (R. 785, l. 1 – 786, l. 4; R. 1074, ll. 2 – 3). Wilde’s opinion did not rest on RTT or cell-tower data; it rested on an iOS “learned location of interest” artifact that, by his own admission, the FBI has historically considered suspect and that the purveyors of Cellebrite have struggled to assess their reliability. (R. 786, ll. 2–13). Borrowing the established credibility of CSLI to vouch for a different, unvalidated technology is not proof of reliability.

D. The method failed the one time it could be tested against reliable data.

The State's reliability showing rests on Wilde's claim that he cross-checked every location artifact against reliable Verizon data and found the datasets "consistent . . . every time." (BOR p. 36). However, Wilde's claim collapses on the facts that matter. For the date of the shooting, there was no RTT data—so the very cross-check the State says validates the method was unavailable for the only data point of consequence. And on the date of arrest when RTT data was available, the same type of artifact placed Mr. Douglass' phone at 3 Boyce Avenue, when the RTT data conclusively proved the phone was in Hilton Head and never near that address. (R. 1102, l. 4 – 1103, l. 24; R. 1857).

The single occasion on which the artifact could be measured against reliable data, it was wrong. The State answers that the arrest-date artifact is not "wrong" but reflects a "creation date" or data synced from another device. (BOR pp. 36–37). That answer does not show Wilde's testimony to be reliable. If an iOS artifact can report a location the phone never visited because of syncing or creation-date quirks the analyst cannot explain, then the identical artifact for the shooting date cannot reliably establish presence either. The State cannot credit the artifact when convenient and explain it away when not. This Court should reverse the admission of this expert testimony and remand this case for a new trial.

Mr. Douglass' *Miranda* claim is preserved, and the unwarned statement was not harmless.

A. The issue is preserved because it was raised to and ruled upon.

The State argues the trial court ruled only on the voluntariness of Mr. Douglass' statement under *Jackson v. Denno*, not on *Miranda* custody, and that the *Miranda* issue is therefore unpreserved. (BOR pp. 40–42). The record refutes this. Counsel expressly argued that Mr. Douglass was subjected to custodial interrogation by Bixby in violation of *Miranda*, that no reasonable person would have felt free to leave, and that Bixby specifically sought to elicit incriminating information without first providing Mr. Douglass with his *Miranda* rights. (R. 117, l. 6 – 118, l. 4; R. 123, l. 22 – 124, l. 23). The trial court then admitted the statement, finding that Mr. Douglass “was under investigative detention and not arrest.” (R. 126, ll. 8 – 23). A finding that the suspect was not under arrest but in investigative detention is a ruling on custody. That is the precise factual predicate of the *Miranda* question the court was asked to decide and the court decided it against Mr. Douglass.

B. On the merits, the State concedes the hallmarks of custody.

Tellingly, the State's entire response to the merits of Mr. Douglass' argument is relegated to a single footnote. (BOR p. 44 n.10). The State concedes that Mr. Douglass' detention “carried many of the hallmarks of custodial interrogation.” The concession is warranted. Mr. Douglass was ordered from his van at gunpoint, frisked, handcuffed, placed in the back of a patrol car, and held for more than twenty minutes for a detective to arrive and question him about an attempted murder. The State itself proved at trial that this was a “high-risk” or “felony” stop that was “not standard at all.” (R. 374, l. 13 – 375, l. 3; R. 386, l. 24 – 387, l. 2). *Berkemer v. McCarty*'s routine-traffic-stop exception, on which the State's footnote leans, does not reach a stop like the one here. 468

U.S. 420 (1984). A stop that the State repeatedly told the jury was anything but routine. As this Court recognized in *State v. Medley*, 417 S.C. 18, 787 S.E.2d 847 (Ct. App. 2016) and *State v. Ledford*, 351 S.C. 83, 567 S.E.2d 904 (Ct. App. 2002), a suspect handcuffed and confined to a patrol car is in custody for *Miranda* purposes.

C. The statement was not harmless.

The State now portrays the statement as “limited and equivocal” and unimportant to its case. (BOR pp. 42–43). That is not how the State treated it at trial. Bixby’s questioning was designed to establish that “no one else had been in control of the vehicle . . . [and] no one else had the keys to the vehicle.” (R. 853, ll. 20 – 25). This was one of the primary ways the State used to exclude David Smith as the shooter. A statement the State elicited and then deployed to eliminate the defense’s alternative suspect was not unimportant. The State’s harmless-error argument, moreover, leans on the geolocation artifact and the beach-video comparison which should have never reached the jury as addressed in Issues 1 and 2. Harmlessness cannot be built on proof that was itself the product of constitutional error. This Court should reverse.

The first-aid video was not probative of any disputed fact, and its prejudicial effect was substantial.

The State defends Officer Bowdoin’s body-camera video as probative of malice and intent to kill because it showed the location of the wound, and as corroboration of testimony. (BOR pp. 45–47). But malice, intent, and the manner of the injury were never in dispute; the only contested issue was identity, as the State elsewhere concedes. Under *State v. Nelson*, 440 S.C. 413, 891 S.E.2d 508 (2023), evidence that proves an undisputed point has minimal probative value. The wound’s location was established by the treating physician’s testimony and by the State’s own account of a punctured lung and fractured clavicle, and the shooting itself was captured on the far less graphic security video, State’s Exhibit 4. The first-aid video was cumulative on every point the State offers. *State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368 (1995), *State v. Hawes*, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018), and *State v. Gray*, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014) are all inapposite. Each of these cases involved injury facts genuinely at issue or an excess of violence bearing on a contested malice element.

The State’s emphasis on Mr. Baum naming “Donna Boyd” also does not save the exhibit. That brief exchange could have been presented, and was presented, without the graphic footage of Mr. Baum bleeding from the chest, telling his wife he loved her, declaring “I’m gonna die,” and being lifted onto a stretcher. The State chose the most prejudicial vehicle available for a fact it could have proved in a sentence.

The State’s reliance on *State v. Davis-Kocsis*, 443 S.C. 127, 903 S.E.2d 491 (2024) is also misplaced. That case involved an audio recording. This case involves a video of a man in severe distress, and the danger of unfair prejudice was heightened, not lessened, because the only other

plausible suspect, David Smith, was dead, leaving the jury's impulse to hold someone accountable to fall on the one defendant present. The probative value was minimal and the prejudice substantial. As *United States v. Bailey*, 840 F.3d 99 (3rd Cir. 2016) confirms, even bloodless footage of a shooting can be unfairly prejudicial. The video should have been excluded. This Court should reverse.

The silent-escort video improperly commented on Mr. Douglass' right to remain silent.

At trial, the State justified State's Exhibit 43 on the basis that it showed Mr. Douglass' 'gait' for comparison with the surveillance video. (R. 381, ll. 5 – 14). On appeal, the State largely abandons that rationale for a new one: that the video shows an 'emotionless' demeanor evidencing consciousness of guilt. (BOR pp. 48–49).

The video shows Mr. Douglass, handcuffed, escorted in silence into a room bearing the placard "INTERVIEW ROOM." (State's Ex. 43). However the State now labels it, the plain suggestion of that footage is that Mr. Douglass was taken to be interviewed and said nothing—an indirect comment on the exercise of his right to remain silent that *Griffin v. California*, 380 U.S. 609 (1965) and *Edmond v. State*, 341 S.C. 340, 534 S.E.2d 682 (2000) forbid. *Edmond* bars such a comment "either directly or indirectly." 341 S.C. at 345, 534 S.E.2d at 685. The demeanor rationale is in any event cumulative: three officers already testified that Mr. Douglass was "very calm" and "emotionless." (R. 377; R. 391; R. 450). The original gait justification fails on the State's own video, which, as the opening brief showed, does not actually depict Mr. Douglass' gait: he is handcuffed behind his back, an officer holds his arm, and he walks off-camera to the officer's side.

The State's overlapping harmless-error arguments cannot substitute for a fair trial.

The State asserts harmless error as to every issue, but each assertion rests on the same body of proof: the geolocation artifact placing the phone at 3 Boyce Avenue and the beach-video comparison which should never have been admitted. Set that evidence aside, and what remains is an entirely circumstantial case in which no firearm and no .22 caliber ammunition were found in Mr. Douglass' home (R. 674, ll. 14 – 18; R. 677, ll. 2 – 4), and the DNA and fingerprint evidence excluded Mr. Douglass from the recovered rifle (R. 638, l. 25 – 639, l. 24; R. 649, ll. 10 – 21). The errors in this case were not harmless beyond a reasonable doubt. *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (“Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained”). This Court should reverse and remand for a new trial.

CONCLUSION

For the reasons argued in Mr. Douglass' opening brief, and this reply brief, this Court should reverse Mr. Douglass' convictions and sentences and remand this case to Greenville County for a new trial.

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This 18th day of August 2026.