

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Sep 24 2026
SC Court of Appeals

Appeal from Edgefield County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

Opinion No. 2026-UP-434

THE STATE,

RESPONDENT,

V.

GABRIEL DANTRAY CURRY,

APPELLANT

APPELLATE CASE NO. 2022-000966

PETITION FOR REHEARING

On September 9, 2026, this Court affirmed appellant's conviction. *State v. Curry*, Op. no. 2026-UP-434 (S.C. Ct. App. Filed Sept. 9, 2026). Appellant respectfully requests rehearing pursuant to Pursuant to Rule 221(a), SCACR, considering the points overlooked and/or misapprehended by this Court, discussed below.

- I. The trial court erred denying appellant's motion to suppress evidence seized pursuant to the search warrants.

In the opinion this Court found that although "this is a close issue . . . the search warrant affidavits and oral testimony were sufficient to establish probable cause." *State v. Curry*, Op. no.

2026-UP-434 (S.C. Ct. App. Filed Sept. 9, 2026). This Court found the warrant referencing anonymous witness statements was superfluous to appellant's own admission that he was with Calhoun on that day. Additionally, the Court cited to *State v. Thompson*, for the proposition that [i]n determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched." 419 S.C. 250, 256, 797 S.E.2d 716, 719 (2017).

The analysis should only consider what was known to the magistrate at the time the warrant was issued. What was known was very little and the record makes clear the surveillance video was discovered after the warrant was issued. The affidavit was facially defective, it contained no basis of knowledge, no veracity assessment, and no nexus to criminal activity beyond the assertion appellant was the last person seen with Calhoun.

Neither the search warrant affidavits or the oral testimony were sufficient to establish probable cause in this case. Appellant did acknowledge he spent time with Calhoun that day and that they used drugs but this without more is not enough. *Thompson*, correctly states—albeit differently—what appellant argued at trial and on appeal. Police must have a reasonable belief that there would be items relating to the murder of Calhoun in Dixon's home. Our case law requires more than suspicion; drug use is not evidence of murder.

As argued in the brief, the fact that appellant was allegedly the last person with Calhoun before his body was discovered was insufficient to constitute probable cause to search his phone. Adding on the fact that law enforcement thought appellant's girlfriend lied when she said appellant was not at home did not materially add to the allegation that appellant was the last person seen with the decedent while the decedent was alive. Someone is always going to be the

last person seen with the victim in every murder case, and that fact alone cannot be probable cause for a search warrant.

The affidavits by which law enforcement obtained appellant's cell phone were invalid. They did not establish probable cause for law enforcement to believe that evidence related to the murder would be found in Dixon's home, and they failed to assert that the information came from reliable sources or credible people. The trial court erred by refusing to grant the appellant's motion to suppress this evidence obtained as a result of the defective search warrants.

Additionally, the search warrant issued for Barger's phone was more deficient than the first search warrant issued in this case because that affidavit failed to state even as much information as the very first deficient affidavit. Judge McLaurin knew only that the affidavit and Officer Smith's testimony alleged Calhoun was using the phone. However, there was no indication of where that information came from or why police believed Calhoun was using the phone.

II. The trial court erred in allowing the state to admit cellphone mapping data the state failed to disclose to appellant until five o'clock on the Friday afternoon before the murder trial was starting on Monday.

In the opinion this Court found the trial court did not abuse its discretion and there was no legal error in admitting the maps because defense was provided the underlying data from which the map was created as early as 2018. *State v. Curry*, Op. no. 2026-UP-434 (S.C. Ct. App. Filed Sept. 9, 2026).

The judge admitting the evidence under these circumstances violated the essential demands of fundamental fairness, and it denied appellant a fair trial and due process as argued by defense counsel.

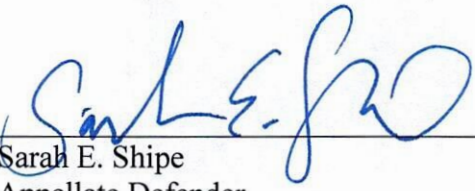
In this case, the prosecution intended and did use this cellphone mapping evidence during its case in chief by way of FBI Agent Matthew Wilde. As such, since it was material to the preparation of appellant's defense, and it was intended for use by the prosecution as evidence of its case-in-chief at trial, and appellant had a right to possess and review this evidence in advance. Defense counsel argued that what the state was doing with the last second disclosure of the cell phone mapping evidence was in violation of appellant's due process rights and his right to a fair trial. R. 51, l. 11 - 64, l. 2. *Cf. State v. Geer*, 391 S.C. 179, 705 S.E.2d 441 (Ct. App. 2010), where this Court found an audio tape of the arrest not being revealed to the defense was not a violation of Rule 5, SCRCrimP. In *Geer*, this Court found that the defense had not shown that the audiotape of Geer's arrest was material to her defense and the record did not indicate the state planned or intended to use the audiotape as evidence in its case in chief at trial.

In this case, the cellphone mapping evidence was critical to the state's case, and the manner in which it was disclosed after five o'clock on the Friday afternoon before the trial began on Monday morning was essentially "trial by ambush," and it denied appellant his right to fundamental fairness and a fair trial. The state obviously intended to introduce this material evidence during its case-in-chief, and it did so over objection at trial.

In *State v. Fullwood*, 274 S.C. 60, 262 S.E.2d 10 (1979), our Supreme Court held Fullwood was denied fundamental fairness in his trial where the investigating officer falsely informed defense counsel that he had no information beneficial to the defense, and the prosecuting attorney knowingly took advantage of defense counsel's ignorance of this favorable evidence to the prosecution's advantage. *See State v. Fullwood*, 247 S.C. 60, 62, 262 S.E.2d 10, 11 (1979). *Citing State v. Fowler*, 101 Ariz. 561, 422 P.2d 125 (1967), and *State v. Bethune*, 104 S.C. 353, 89 S.E.2d 153 (1916).

In this case, appellant was in no position to defend himself against this cellphone mapping evidence because the defense could not procure an expert to examine the evidence and prepare a defense against it given its extraordinarily late disclosure. The judge properly ruled the evidence had to be suppressed but then changed her mind and erroneously admitted this evidence. The defense continued to object to the admission of this evidence at every opportunity.

Given the highly prejudicial nature of this evidence and testimony, and the fact its last minute time of disclosure left appellant utterly without any way to obtain an expert to rebut the evidence and prepare a defense to it, appellant should be granted a new trial since this violated his right to fundamental fairness, a fair trial, and due process. *See State v. Fullwood*, 274 S.C. 60, 262 S.E.2d 10 (1979).



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ATTORNEY FOR APPELLANT

This 24th day of September, 2026.

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Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

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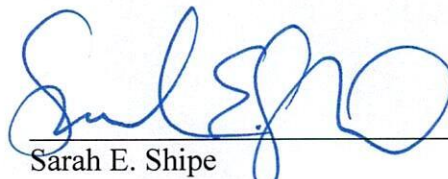
GABRIEL DANTRAY CURRY,

APPELLANT

APPELLATE CASE NO. 2022-000966

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Gabriel Dantray Curry, #344467, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 24th day of September, 2026.



Sarah E. Shipe
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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, September 24, 2026 2:32 PM
To: TommyEvansJr@scag.gov
Cc: Shipe, Sarah; BrandyRankin@scag.gov
Subject: 2022-000966 - The State v. Gabriel Dantray Curry
Attachments: 2022-000966 - The State v. Gabriel Dantray Curry - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the Petition for Rehearing in the above referenced case which will be filed today, September 24, 2026, with the Court of Appeals.

All the best,

Daniel Bast
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