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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County
Court of General Sessions
The Honorable DeAndrea G. Jefferson, Circuit Court Judge
Appellate Case Number 2026-002120

THE STATE,

Respondent-Petitioner,

vs.

NEVELLE JOSHUA EBERHART,

Petitioner-Respondent.

Court of Appeals Opinion No. 2026-6150 (S.C. Ct. App. filed July 1, 2026)

STATE'S PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE

A Fourth Amendment search occurs when the government invades an individual's "reasonable expectation of privacy." Eberhart was required to wear an ankle monitor while out on bond. Did the court of appeals err by holding Eberhart was "searched" when police obtained the bondsman's GPS records produced by the ankle monitor?

STATEMENT OF THE CASE

A Richland County jury convicted Petitioner-Respondent Nevelle Eberhart of armed robbery and possession of a weapon during a violent crime after a jury trial before the Honorable DeAndrea G. Benjamin on February 6–8, 2023. Eberhart was sentenced to 15 years' incarceration. On appeal, Eberhart argued the trial court erroneously denied his motion to suppress GPS records generated by an ankle monitor Eberhart was wearing when he committed the robbery. Two judges on the panel agreed, holding police were required to obtain a search warrant before requesting the bondsman's GPS records. The court affirmed on harmless error grounds. Judge McDonald concurred in result only, opining Eberhart failed to demonstrate a reasonable expectation of privacy in the bondsman's GPS data. The State petitioned for rehearing, suggesting rehearing en banc. The petition was denied. Eberhart filed a petition for writ of certiorari on September 25, 2026, and the State filed a return on October 2, 2026. This cross-petition for writ of certiorari follows.

WHY THE PETITION SHOULD BE GRANTED

This case presents a question of great public importance. The court of appeals committed serious constitutional error by holding Eberhart had a constitutionally-protected privacy interest in the GPS data created by a bondsman's ankle monitor he wore while out on bond. This decision, if allowed to stand, will seriously undermine the efficacy of pretrial GPS monitoring and set an alarming Fourth Amendment precedent.

Rule 242, SCACR, provides that 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 this Court's discretion or power to grant review, indicate 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.

All of these factors are present in this case. The court of appeals majority, in a published opinion, failed to apply basic Fourth Amendment law and reached an incorrect result on an important constitutional question. A criminal defendant on pretrial release does not have a Fourth Amendment privacy interest in the GPS data produced by the ankle monitor he is required to wear as a condition of bond. This Court should grant certiorari review and correct this serious constitutional error.

ARGUMENT

A criminal defendant on pretrial GPS monitoring has no Fourth Amendment privacy interest in the location data recorded by a bondsman's ankle monitor.

A criminal defendant has no right to privacy in GPS data produced by an ankle monitor installed as a condition of his bond. In holding otherwise, the court of appeals failed to apply fundamental Fourth Amendment principles and, in a published opinion, set an alarming Fourth Amendment precedent. This Court should grant certiorari review and correct this serious constitutional error.

The underlying facts of this case are egregious. Eberhart—on GPS monitoring as a condition of his bond on violent Lexington County charges, including robbery—committed an additional robbery in Richland County while wearing the ankle monitor. When implicated as a suspect, police obtained the GPS records from his bonding company. The records confirmed his presence at the scene of the crime.

The court of appeals held the records should have been suppressed as the fruit of an unconstitutional warrantless search. The court of appeals placed great importance on whether the GPS monitoring was court-ordered, which was not explicitly established at trial. The court seemed to contemplate a hypothetical agreement between Eberhart and his bondsman that the bondsman would not share the ankle monitor data with the State without his permission. The court faulted the State for failing to disprove the existence of this extremely unusual "agreement." The court explained "the agreement between Eberhart and the bond company was not provided in the record on appeal" and that the "analysis in this case would be different if this case concerned court-ordered monitoring or if the agreement was included in the record and indicated [the bonding company]

could or would share information with law enforcement." The court explained it was "unable to determine whether the agreement was 'on behalf of the state' or merely an agreement between Eberhart and [the bonding company]." Eberhart, Howard Adv. Sheet no. 25 at 15.

This should have been the end of the analysis. Absent proof of this hypothetical, extraordinarily unusual "agreement" between Eberhart and the bonding company to keep the GPS data confidential, Eberhart failed to show even a subjective expectation of privacy in the data. Nor did Eberhart proffer any testimony about the existence of such an agreement. It was Eberhart's burden to prove the existence of a constitutional privacy interest in the data. See Rakas v. Illinois, 439 U.S. 128, 132 n.1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure. . . . The prosecutor's argument gave petitioners notice that they were to be put to their proof on any issue as to which they had the burden, and because of their failure to assert ownership, we must assume, for purposes of our review, that petitioners do not own the rifle or the shells." (emphasis added)); State v. Robinson, 410 S.C. 519, 530, 765 S.E.2d 564, 570 (2014) (explaining "the defendant bears the burden to demonstrate that he had an actual and reasonable expectation of privacy in the place illegally searched" (citing Rakas)); United States v. Bellina, 665 F.2d 1335, 1340 (4th Cir. 1981) ("The burden rests on one who seeks to suppress to prove that his legitimate expectation of privacy has been violated by the challenged search."). But rather than holding Eberhart to his burden, the court of appeals majority indulged in every presumption in his favor, faulting the State for failing to present evidence to disprove his objectively unreasonable and unsupported privacy claim.

Instead, the court analyzed the case as if the GPS monitoring was not court-ordered, finding "Eberhart had a subjective expectation in the privacy of his GPS data" because "there is no evidence

in the record that the monitor was required as a condition of bond by a court, and the State failed to present any evidence that he was informed the government could have access to the data for investigatory purposes unrelated to his bond." Eberhart, Howard Adv. Sheet no. 25 at 16. This analysis turns the Rakas burden on its head, effectively requiring the State to disprove the existence of a privacy interest that has not been established by the movant and has never been recognized by an appellate court in this State. This was an error of law.

The fact of the matter is that GPS monitoring was a condition of Eberhart's bond. The bond order is in the Lexington County Clerk of Court's file, and this Court can take judicial notice of that public record. See Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (explaining "an appellate court can take judicial notice of something that was not before the trial court if it is indisputable"). But it shouldn't have to. If there was an agreement between Eberhart and his bondsman to keep the GPS data confidential, Eberhart was required to produce it in support of his motion. But Eberhart did not even allege the existence of such an agreement at trial, because no such agreement existed. The court of appeals erred by faulting the State for not putting the bond order in the record, and for effectively presuming the existence of this hypothetical agreement between Eberhart and his bondsman. This is the exact opposite of the correct analysis. Eberhart failed to produce evidence to support his privacy claim and thus failed to establish a reasonable expectation of privacy. This error by itself warrants certiorari review.

But the court of appeals committed substantive constitutional error as well. Even if the GPS monitoring had not been court-ordered, Eberhart still would not have a constitutional privacy interest in it because it was not his "person[], house[], paper[], or effect[]," and it was not held by the bondsman for Eberhart's benefit. U.S. Const. Amend. IV; see Chatrie v. United States, 146 S. Ct.

2193, 2218 (2026) (Gorsuch, J., concurring). It was held, at most, for the bondsman's benefit. No person could reasonably believe their physical location was private while on pretrial GPS monitoring, the entire purpose of which is to track a defendant's movements to ensure compliance with the terms of his bond. Eberhart knowingly agreed to wear the ankle monitor so that he could get out of jail. He knew he was being monitored. He could have had no expectation that the data was his private information.

There are novel aspects of Fourth Amendment law implicated by the facts of this case, including the third-party doctrine and the extent to which individuals have a constitutional privacy interest in their physical location. A full discussion of those issues is beyond the scope of this petition, but the State respectfully submits they are important issues which call out for this Court's attention. The State respectfully asks this Court to grant its petition for writ of certiorari and order full briefing of the important constitutional issues presented by this case.

CONCLUSION

For the foregoing reasons, this Court should grant the State's petition for writ of certiorari.

Respectfully submitted,

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October 5, 2026