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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
The Honorable Courtney Clyburn-Pope, Circuit Court Judge
Appellant Case No. 2022-000966

THE STATE,

RESPONDENT

v.

GABRIEL DANTRAY CURRY

APPELLANT

Opinion No. 2026-UP-434

RETURN TO APPELLANT'S PETITION FOR REHEARING

On September 9, 2026, this Court filed an opinion affirming the decision of the Circuit Court. *State v. Curry*, Op. no 2026-UP-434 (S.C. Ct. App. Filed Sept. 9, 2026). On September 24, 2026, the Appellant filed a petition for rehearing. On September 28, 2026, this Court requested that the Respondent deliver a return within ten days of this Court's request. The Respondent now files this return. The Respondent argues that this Court was correct in their decision affirming the decision of the trial court's rulings.

Pursuant to rule 221(a) of the South Carolina Appellate Court Rules, a petition for rehearing shall state with particularity the points supposed to have been overlooked and misapprehended by the court. Rule 221(a), SCACR. The Respondent argues that the Appellant failed to reveal anything that has been overlooked or misapprehended by this Court. The Appellant is just stating arguments that were raised in their initial appeal. A Petition for Rehearing is not for the case to be tried in the

appellate court a second time. *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). The Respondent argues that the Appellant has not raised any issue that would cause this court to grant a rehearing. The decision of this Court is lawful and should not be reviewed. This petition should be subject to dismissal.

- 1. This Court was correct in their determination that the issued search warrants were lawful; therefore, the Circuit Court did not err in allowing into evidence the items recovered due to these search warrants.**

The Appellant argues that this Court overlooked or misapprehended the law by deciding that the Circuit Court committed no error by not suppressing the evidence that was recovered due to these search warrants. They were signed by Edgefield County Magistrate, the Honorable James McLaurin.

During a pre-trial hearing the Appellant moved to suppress all evidence found due to the service of six search warrants. These search warrants were for a search of the Appellant's residence where cell phones were recovered, and the contents of each of the recovered phones. Judge McLaurin, who signed these warrants, testified. Judge McLaurin testified regarding the extra information given to him under oath by Edgefield County Sheriff Department Investigator Jimmy Smith.¹ The information was given by Investigator Smith prior to the signing of each of these search warrants.

As this court noted within their opinion, Judge McLaurin testified that Investigator Smith informed him that:

(1) "Curry was a person of interest, somebody they wanted to talk to;" (2) officers knew that Curry was in Dixon's home when they attempted to speak with him on October 10 and Dixon indicated "a level of ... trying to hide something;" and (3) Curry and Calhoun "had been seen together riding around in Calhoun's mother's car and ... then the car was found not far from where the body was eventually

¹ Investigator Smith was deceased at the time of this trial.

found.” Lastly, Judge McLaurin testified that he believed Curry resided with Dixon and the home was close to where officers found Calhoun’s body.

Curry, at pg. 3.

Oral testimony may be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. *State v. Jones*, 342 S.C. 121, 127, 536 S.E.2d 675, 679 (2000).

The Appellant argues that the fact that he was the last person seen with the victim is not enough to establish probable cause. However, there is more to the fact they were together the day the victim died. When reviewing a magistrate’s decision to issue a search warrant, the totality of the circumstances must be considered. *State v. Missouri*, 337 S.C. 548, 525 S.E.2d 394 (1999). Within the search warrant the Magistrate was informed that statements and video surveillance revealed that the Appellant was with the victim that day; that the Appellant was with the victim to obtain marijuana and heroin. Judge McLaurin was also informed that law enforcement went to his girlfriend’s home to talk to the Appellant, and she lied about him not being present; and that the car they were riding in was found not far from the Appellant’s residence. When law enforcement presented a second search warrant for the contents of the Appellant’s phone Judge McLaurin was then informed that the Appellant lied about being at Burger King. A receipt was found in the victim’s vehicle; however, video surveillance also revealed the Appellant going through the Burger King drive thru. Appellant was driving the victim’s vehicle alone.

This Court was correct when it decided that sufficient probable cause was presented to the Magistrate. The term “probable cause” does not import absolute certainty. *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (2003). The Appellant argues that law enforcement must have a reasonable belief that items related to the murder would be found in the Appellant’s home. In determining whether a search warrant should be issued, magistrates are concerned with

probabilities, not certainties. *State v. Jones*, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000). In *State v. Thompson* the Supreme Court decided,

“In 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.”

State v. Thompson, 419 S.C. 250, 256, 797 S.E.2d 716, 719 (2017).

The search warrant stated that the Appellant was not a suspect but a person of interest. There was plenty of probable cause to expect evidence in the house where the Appellant resided. Not only was the Appellant the last person seen with the victim while he was alive, Appellant was driving the victim’s car. The victim’s body was found not far from the home where the Appellant resided. When law enforcement went to the home to speak to the Appellant, his girlfriend lied and said he was not present. There was video surveillance revealing that they were together that day. Prior to the second issuance of search warrants, law enforcement discovered from surveillance video that the Appellant was at Burger King driving the victim’s car without the victim. This was discovered after the Appellant lied about his presence at Burger King that day, because a Burger King receipt was found in the victim’s vehicle. This was sufficient probable cause justifying the issuance of these search warrants.

Since probable cause was presented, the search warrants were justified. This Court made the correct ruling in affirming the decision of the trial court. A reviewing court should give substantial deference to a magistrate’s determination of probable cause. *Dunbar*, 361 S.C. at 246, 603 S.E.2d at 618, 19.

2. **This Court was correct in finding that the trial court did not err in denying the Appellant's motion to deny phone records since the information used for cell phone mapping was given to the Appellant almost two years prior to trial, and the Solicitor informed the Appellant's counsel that these maps would be introduced into evidence two weeks before the start of trial, giving the Appellant ample time to hire an expert to review these maps.**

The Appellant argues that this was a “trial by ambush.” The Appellant was given the cell site information almost two years prior to trial. The Solicitor informed the Appellant eleven days prior to trial that there was cell mapping that was going to be displayed during the trial.

This Court was correct in finding there was no violation of Rule 5. There was also no prejudice in allowing the mapping to be displayed before the jury. Eleven days prior to trial the Appellant was notified that the Solicitor was going to obtain this mapping from the FBI. Once the mapping was received from the FBI, the Solicitor gave copies to the Appellant on the Friday prior to trial. At that time, the Appellant could have immediately obtained funding for an expert to review the maps. During the pre-trial hearing the Solicitor also informed the trial judge that mapping was created from cell tower records given to the Appellant through discovery on October 9, 2018, almost two years prior to the beginning of trial. The Appellant could have gotten an expert at that time instead of waiting until trial to attempt to suppress the evidence.

Rule 5 is clear; the Solicitor must give the defense an opportunity to review any report they are going to introduce into evidence.² The information was given to the Appellant almost two years earlier, and they were made aware that the mapping would be used eleven days prior to trial. Appellant could have hired an expert the moment he was given the phone records and the mapping

² Upon request of the defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense, or are intended for use by the prosecution as evidence in chief at the trial. Rule 5(D), SCRCCrimP.

that was going to be presented to the jury. There was plenty of time to hire an expert. So when the Appellant received the actual mapping it could have been immediately forwarded to his expert. The unavailability of an expert was due to the Appellant and not the Respondent. The Appellant was given all of this evidence two years prior to trial, the mapping came from phone records already given to the Appellant through discovery.

This court made the correct decision affirming the decision of the trial court. The Appellant was given the information that was contained within the mapping. This information was given through discovery almost two years prior to trial. The Appellant was also made aware of the use of the phone mapping eleven days prior to trial. The mapping was given to the Appellant almost immediately after it was received by the Solicitor. The Appellant's failure to retain an expert to review this mapping is the fault of the Appellant and not the Solicitor. Ample notice was given to the Appellant to have an expert review these records. There was no "trial by ambush." The failure to have an expert to review this information is the fault of the Appellant. There was no violation of Rule 5, so the trial court did not err in allowing in this evidence. This Court made the proper decision in affirming the decision of the trial court. This petition for rehearing should be dismissed.

CONCLUSION

This Court did not err in the decision to affirm the rulings of the trial judge. Therefore, this petition for rehearing should be subject to dismissal.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

By: s/ Tommy Evans, Jr.
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 7, 2026

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
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Appeal from Edgefield County
The Honorable Courtney Clyburn-Pope, Circuit Court Judge
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THE STATE,

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GABRIEL DANTRAY CURRY,

Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Return to Appellant's Petition for Rehearing, along with the Certificate of Service have been forward to Appellant's counsel, Sarah E. Shipe, Esquire via email today October 7, 2026, to SShipe@sccid.sc.gov and her assistant, Dan Bast, at DBast@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This is the 7th day of October 2026.

s/Tommy Evans, Jr.

Tommy Evans, Jr.

Office of Attorney General

P. O. Box 11549

Columbia, South Carolina 29211

(803) 734-6305

ATTORNEY FOR PETITIONER

Brandy Rankin

From: Brandy Rankin
Sent: Wednesday, October 7, 2026 12:57 PM
To: Shipe, Sarah
Cc: Tommy Evans, Jr.; dbast@sccid.sc.gov
Subject: The State v. Gabriel Dantray Curry - Return to Petitioner's Petition for Rehearing - Appellate Case No. 2026-001956
Attachments: Curry.Gabriel.Dantray.return to petition for rehearing.pdf; Cert of Service for Petition for Rehearing.pdf

Dear Ms. Shipe,

Please find attached the Respondent's Return to Petition for Rehearing together with the Certificate of Service. These documents along with a copy of this email will be filed with the South Carolina Court of Appeals today, October 7, 2026.

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant to Tommy Evans, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305



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