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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-001464

The State of South Carolina,

Respondent,

v.

John Allen Bryant, Jr.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court erred by finding that the search warrant affidavit for records related to appellant's cellphone was sufficient, and thus, allowing the results of the search to be entered during appellant's trial where the affidavit was vague and lacked sufficient underlying facts to support a determination of probable cause?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

The trial court properly refused to suppress cell phone records obtained pursuant to a search warrant, where the facts articulated in the search warrant affidavit were sufficient to support the determination of probable cause.

STATEMENT OF THE CASE

On March 7th, 2023, at approximately seven p.m., Sergeant John Gregory responded to multiple reports of gunshots near Alex Alford Drive. (Tr.p. 130, lines 8-10; Tr.p. 144, line 21-p. 146, line 18). Gregory arrived at the 300 block of Alex Alford Drive to find J.W. ("Victim") lying deceased in his driveway with a shotgun lying at his feet. (Tr.p. 145, line 24-p. 148, line 6). Gregory also located a trial of shell casings moving away from Victim, later identified as 9mm and .223 rifle caliber casings. (Tr.p, 149, lines 4-9; Tr.p. 272, lines 15-21). Law enforcement were able to locate surveillance footage that recorded the drive-by shooting. (Tr.p. 209, line 8-p. 210, line 7). The footage was entered at trial as State's Exhibit's 13-17. (Tr.p. 180, line 9; 193, line 10; 194, line 16; 197, line 8).

At trial, Sergeant Blair Cribb of the Georgetown City Police Department testified that, based on the footage, he was able to identify a 2005 white Nissan Maxima as the vehicle involved in the shooting, and he explained to the jury that surveillance footage caught a white Nissan with a distinct moonroof driving around town shortly before the shooting. (Tr.p. 214, lines 9-21). Cribb testified that the footage showed the white car pulling into the Georgetown Landing Apartments parking lot, where two people got out of the car and retrieved firearms. (Tr.p. 224, line 4-p. 225, line 19). From there multiple surveillance cameras across town captured the white car's route towards Victim's residence. (Tr.p. 225, line 6-p. 226, line 13). The white Nissan is on camera driving by Victim's residence as the car's occupants repeatedly fire shots, striking Victim where he stood in the driveway. (Tr.pp. 209-10; Tr.p. 226, lines 3-21). Cribb testified that law enforcement traced the white Nissan Maxima back to 16-year-old C.S. (Tr.p. 215, lines 3-16). A search of the vehicle returned a Publix nametag for a "John," and gunshot residue. (Tr.p. 216, lines 14-12; 535, lines 18-20).

Investigator Michael Bordner of the Georgetown City Police Department testified that a search of C.S.'s home recovered a .40 handgun, which Bordner clarified was not the right caliber for any of the casings recovered at the scene of the shooting. (Tr.p. 283, lines 7-25). Bordner testified that after he arrested C.S., C.S. informed police that Appellant and Appellant's brother J.B. were in the car with him that night and that both fired out the car window in response to gunfire from a different car. (Tr.p. 288, lines 8-23).

Bordner subsequently arrested Appellant, who agreed to speak with police in a recorded interview entered into evidence as State's Exhibit 68. (Tr.p. 297, lines 12-17). In his interview, Appellant stated that he was in the car that night with C.S. and indicated that he was sitting in the back seat of the car captured on the security footage of that night. (Tr.p. 298, line 1-p. 301, line 20) (Exhibit 68).

C.S. also testified for the State at trial. (Tr.p. 373, line 21). C.S. described the events leading up to Victim's murder, in which C.S., Appellant, Appellant's brother J.B., and two mutual friends were driving across town together in C.S.'s Nissan. (Tr.p. 392, line 14-25). C.S. testified that, sometime before the shooting that killed Victim, there was a separate drive-by incident on a different street where a car fired shots at his Nissan, striking his car. (Tr.p. 393, line 10-21). This testimony was corroborated by surveillance footage of that earlier shooting, which showed an encounter between C.S.'s white Nissan Maxima and a grey Nissan Versa where a person can be seen exiting the Nissan Versa to fire shots at C.S.'s vehicle. (Tr.p.211, line 21-p.212, line 24).[1] C.S. testified that this occurred approximately thirty minutes before the fatal shooting. (Tr.p. 406, lines

[1] A search of the grey Nissan Versa returned IMI-brand shell casings. (Tr.p.305, line 24-p.207, line 2). No IMI casing were found at the scene of the fatal shooting. (Tr.p.149, lines 4-9; p.272, lines 15-21).

20-22).

C.S. explained that following that attack he, Appellant, and Appellant's brother agreed it was "retaliation time . . . Somebody got to die tonight," and the group went to Landing Apartments where two individuals were captured on surveillance footage retrieving firearms. (Tr.p.395, lines 20-23, p.224, lines 4-25). C.S. further testified that, after they left Landing Apartments, Appellant gave him directions to drive across town. (Tr.p. 399, lines 6-8). Appellant directed him to the intersection at Emanuel and Alex Alford, where C.S.'s vehicle was later observed on surveillance footage. (Tr.p. 400, lines 3-5). C.S. testified that once he turned down Alex Alford Street, he saw a car stopped in the middle of the road. (Tr.p. 400, lines 8-25).

C.S. testified that as they drove past the stopped car, the car's back driver window rolled down and someone inside began to shoot at them. (Tr.p. 402, lines 6-12). C.S. further testified that while he ducked down and attempted to drive them out of range, Appellant and J.B. began shooting back at the car. (Tr.p. 402, lines 8-17). C.S. admitted that during the exchange he saw a person standing nearby, and that by the time he drove away that person was no longer standing. (Tr.p. 402, line 22-p. 403, line 4). C.S. testified that, during the fatal shooting, he observed Appellant firing a pistol and J.B. firing a rifle. (Tr.p. 409, line 23- p. 410, line 7).

The State then called Investigator Stephen Brown, who testified that he applied for a search warrant for Appellant's call logs and cell site information during the time of the shooting. (Tr.p. 443, lines 11-16). Appellant objected to the warrant, arguing that it was insufficient. (Tr.p. 444, line 19-p. 445, line 23). The State argued in response that the warrant was sufficient because it set forth the connection between that phone and Appellant and there was reason to believe the phone was present during the shooting. (Tr.p. 445, lines 4-16). The trial court overruled Appellant's objection based on the sufficiency of the affidavit. (Tr.p. 445, lines 24-25).

The State then admitted the cell site data and tendered Anthony Marracino as a historic cell site data analyst. (Tr.p. 472, lines 20-24). Marracino testified that around the time of the shooting Appellant's phone connected with cell towers along the route Sander's car took on the surveillance footage. (Tr.pp. 482-86).

Following deliberations the jury returned a verdict of guilty on indictment 2023-GS-22-00417 for the charge of voluntary manslaughter, and on indictment 2023-GS-22-00418 for the charge of possession of a weapon during the commission of a violent crime. (Tr.p. 587, lines 7-15). The trial court sentenced Appellant to twenty (20) years' imprisonment for the voluntary manslaughter and five (5) years' imprisonment for the possession charge, to run concurrently. (Tr.p. 598, line 21-p. 599, line 2).

STANDARD OF REVIEW

"Appellate courts apply a deferential standard of review when reviewing an appeal from a motion to suppress evidence based on the Fourth Amendment." *State v. Simmons*, 430 S.C. 1, 13, 841 S.E.2d 845, 851 (2020). The denial of a motion to suppress will be reversed "only upon a finding of clear error." *State v. Jones*, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021). If there is any evidence to support the trial court's decision, the decision must be affirmed. *Simmons*, 430 S.C. at 13, 841 S.E.2d at 851.

ARGUMENT

The trial court properly refused to suppress cell phone records obtained pursuant to a search warrant, where the facts articulated in the search warrant affidavit were sufficient to support the determination of probable cause.

Appellant argues the trial court erred in not granting his motion to suppress the cell phone records on the ground that the search warrant affidavit failed to set forth sufficient facts to establish probable cause. Appellant claims the affidavit "contained only vague, conclusory statements that failed to specify why law enforcement believed his cell phone would contain evidence" related to the shooting of Victim. (App.Br.p.11).

Probable cause is a practical, nontechnical concept; it will be found wherever "the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Ornelas v. United States*, 517 U.S. 690, 695–96 (1996). Probable cause "is not a high bar." *Jones*, 435 S.C. at 145, 866 S.E.2d at 562 (quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014)). It requires only a "fair probability" upon which "reasonable and prudent people" might act. *Id.*

"There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant." *Franks v. Delaware*, 438 U.S. 154, 171 (1978). Moreover, the standard for review of a magistrate's probable cause determination is highly deferential, and a reviewing court must uphold the validity of the search warrant if there is any "substantial basis" for concluding that a search would uncover evidence of a crime. *Illinois v. Gates*, 462 U.S. 213, 236 (1983). Even where an affidavit's statement of probable cause is "doubtful or marginal," a reviewing court should resolve such cases in favor of the warrant. *Id.* at 237 n.10 (quoting *United States v. Ventresca*, 380 U.S. 102, 109 (1965)).

The search warrant affidavit in question states:

> I, Stephen Brown, being duly sworn, depose and say:
>
> I am a certified law enforcement officer in the State of South Carolina. I am employed by the 15th Circuit Solicitor's Office as an Investigator. I have been employed as an investigator for approximately 21 years. I am authorized to make searches and seizures.
>
> On March 7, 2023 at approximately 1913 hours, Georgetown Police Officers responded to 310 Alex Alford and Gilber Street, in the city limits of Georgetown in Georgetown County, South Carolina, in reference to shots fired. The victim, [J.W.] sustained several gunshot wounds and later succumbed to those injuries at Georgetown Memorial Hospital.
>
> Investigators reviewed CCTV footage from the area of the crime scene and developed a vehicle of interest (Nissan Maxima, moon roof, sticker/decal affixed to the rear window, driver's side). Video footage shows what appears to be the Maxima slow down, an unknown person pop-up from the driver's side back seat window. The Maxima then fled the area. Approximately five minutes later a vehicle that matched the description was located on the Flock Video Camera System, bearing a SC license plate MBW 840. The vehicle is registered to Franklin Sanders Jr., at [address in Georgetown, SC].
>
> On March 17, 2023, [C.S.] (Franklin Sanders' son), admitted, post Miranda to driving the aforementioned vehicle. Further, [C.S.] stated that John Bryant and [J.B.] were shooting guns outside of the vehicles windows while they were traveling on Alex Alford Drive on the evening of March 7, 2023. [C.S.] also stated that he knew John Sanders' phone number to be [-9394]. It is believed that [C.S.] was referring to John Bryant. [C.S.], [J.B.] and John Bryant were all charged criminally in relation to this shooting.
>
> It is this investigators belief based on experience and training that suspects involved in criminal activity often times use cellular phones or possess cellular phones during a crime. Further, it is this investigator's belief that T-Mobile (service provider for [-9394]) does keep in their ordinary course of business the records described above in the "DESCRIPTION OF PROPERTY SOUGHT" portion of this Search Warrant. All information sought is believed to possibly aid in the furtherance of this criminal investigation.

(Nov. 1, 2024 Search Warrant Affidavit).

Contrary to Appellant's claim, this affidavit clearly provides far more than mere "vague, conclusory statements." (App.Br.p.11). The affidavit sets forth a thorough and logical account of the investigation into Victim's shooting and the eventual identification of Appellant as a participant in the crime. It explains how the white Maxima was developed as the suspect vehicle based on CCTV footage of the shooting. It states how the Maxima was ultimately traced to C.S. through his father, Franklin Sanders, Jr. It explains how C.S. gave a statement admitting to his role in the drive-by shooting and implicating Appellant and Appellant's brother, J.B., as the shooters. It states that C.S. disclosed Appellant's phone number to police.

All of this information together easily meets the bar—which is "not a high bar"—of establishing probable cause. *Jones*, 435 S.C. at 145, 866 S.E.2d at 562 (quoting *Kaley*, 571 U.S. at 338). The task of the trial court was simply to determine whether the affidavit articulated a "substantial basis" for the issuing magistrate's conclusion that a search of Appellant's phone records would probably uncover evidence of a crime. *Gates*, 462 U.S. at 236. Under this deferential standard, even "doubtful or marginal" probable cause determinations should be resolved in favor of the warrant. *Id.* at 237 n.10 (quoting *Ventresca*, 380 U.S. at 109). This, however, was not a "doubtful or marginal" case; frankly, it is hard to imagine how the affidavit could be more clear. Appellant's claim that the affidavit provided no more than vague and conclusory assertions is manifestly absurd.

Appellant attempts to liken the affidavit in this case to those condemned by the South Carolina Supreme Court in *State v. Smith*, 301 S.C. 371, 392 S.E.2d 182 (1990); and *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997). In *Smith*, the affidavit merely asserted that Smith had "robbed the [victim] at knife point," without articulating any facts whatsoever to explain how the affiant had arrived at that conclusion. *Smith*, 301 S.C. at 372, 392 S.E.2d at 183. Accordingly,

the court found the affidavit gave the magistrate "no basis to make a judgment regarding probable cause." *Id.* at 373, 392 S.E.2d at 183. In *Weston*, the affidavit merely noted that a witness claimed the defendant was driving a vehicle "at the time of the incident," but failed to state any connection between the defendant or the defendant's car and the crime under investigation. *Weston*, 329 S.C. at 289–92, 494 S.E.2d at 802–03.

These cases are obviously distinguishable from the case now before this Court. The affidavit in the present case clearly presents a logical connection between Appellant and the crime: namely, the fact that C.S. confessed to his role in the drive-by shooting and identified Appellant, by name, as one of the shooters. The affidavit further shows that C.S.'s statement was consistent with the CCTV footage depicting a Nissan Maxima at the shooting and the subsequent identification of the Maxima as belonging to C.S.'s father. There is simply no comparison between the terse, conclusory affidavits at issue in *Smith* and *Weston* and the thorough, well-supported affidavit in the present case.[2]

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[2]Even if the affidavit in this case were somehow defective, that alone would not justify application of the exclusionary rule to suppress Appellant's cell phone records. The exclusionary rule "is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *United States v. Calandra*, 414 U.S. 338, 348 (1974). "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right"; the purpose of the exclusionary rule is "to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused." *Michigan v. Tucker*, 417 U.S. 433, 447 (1974). "The rule's sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations." *Davis v. United States*, 564 U.S. 229, 236–37 (2011). Therefore, the exclusionary rule should only be applied where the benefits of deterring future police misconduct outweigh the "heavy costs" of exclusion: namely, requiring courts "to ignore reliable, trustworthy evidence bearing on guilt or innocence"; to "suppress the truth"; and often to "set the criminal loose in the community without punishment." *Id.*

> The exclusionary rule is harsh medicine. The jury is charged with the duty of searching for the truth to determine the innocence or guilt

For all of these reasons, the trial court correctly denied Appellant's motion to suppress, and its ruling should be affirmed.

[*conclusion and signature on following page*]

> of the accused, within the appropriate legal standard. Denial of probative evidence detracts from that search. Exclusion should be applied only where deterrence is clearly subserved.

State v. Sachs, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975).

For this reason, the courts of South Carolina and the federal courts have long recognized a "good faith" exception to the exclusionary rule: "When police officers act with an objectively reasonable good-faith belief that their conduct is lawful, trial courts will not exclude evidence seized as a result of that conduct, even though it later turns out the conduct violated the constitution." *State v. Carter*, 445 S.C. 157, 162, 912 S.E.2d 264, 267 (2025) (internal quotations omitted). "[W]hen the police act in good faith, 'the deterrence rationale loses much of its force.'" *Id.* at 163, 912 S.E.2d at 267 (quoting *Davis*, 564 U.S. at 238). In such cases, the deterrent function of the exclusionary rule no longer justifies its heavy social costs, and trial courts should not suppress the evidence. *Id.* at 163, 912 S.E.2d at 267–68.

In this case, officers obtained Appellant's cell phone records pursuant to a facially valid search warrant issued by a magistrate. Under those circumstances, officers were entitled to rely on the warrant in good faith:

> It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause . . . [A]n officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. "[O]nce the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law." . . . Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations.

United States v. Leon, 468 U.S. 897, 921 (1984) (quoting *Stone v. Powell*, 428 U.S. 465, 498 (1976) (Burger, C.J., concurring)). Therefore, as an additional affirming ground, the State submits that the evidence would have been admissible based on the "good faith" exception notwithstanding any purported defects in the search warrant affidavit.

CONCLUSION

For the foregoing reasons, this Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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