

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS

Clifton Newman, Circuit Court Judge

Appellate Case No. 2019-000656

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APR 03 2020

SC Court of Appeals

The State,

Respondent,

vs.

Antonio Simpkins

Appellant.

APPELLANT'S PRO SE BRIEF

Antonio Simpkins
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Judge erred in ruling the Appellant's Fourth (4th) Amendment right against an unconstitutional and unreasonable search and seizure were not violated.

STATEMENT OF THE CASE

The Appellant concedes along with the Statement of The Case submitted by his Court Appointed counsel, Mr. David Alexander, Esquire.

ARGUMENT

The appellant asserts during the beginning of his Jury Trial a Jackson v. Denno Hearing was conducted where he sought to suppress cell phone data / information because his cell phone was seized unconstitutionally. The appellant produced evidence establishing that during March of 2017 Investigator Mitchell Freeman (hereinafter "Mr. Freeman") was a police officer from Richmond Georgia - not South Carolina -.

That on April 4, 2017, Mr. Freeman, 'acting in his official capacity of an officer of Georgia Law, crossed over county and state Jurisdictions from Richmond County, Georgia into Beach County, South Carolina allegedly to conduct an investigation of a missing person. See (Tr. p. 91, lines 12-15) Inv. Freeman claimed that his investigation was based on an anonymous tip allegedly yielding information the appellant may well be a person of interest.

Investigator Freeman testified that he summoned Ms. Brenda Williams (the victim's mother) to the Aiken County Sheriff's Office to give an interview, as well as, to disclosed Julian William's (the victim) cell phone records. Ultimately, "Mr. William's cell phone records contained information basically telling who he had contacted within the last hours before the incident of his death,

From there, Inv. Freeman made contact - by telephone -

with "Alexis Jacobs" (appellant's live in girl friend) who agreed to come to the Aiken County Sheriff's Office to give a Voluntary Statement, in addition to, sign a Consent Form to allow her cell phone to be searched.

Significantly, Inv. Freeman stated he discovered other communication on "Julian's" cell phone records i.e., a number with 443 that he thought was of particular importance. Consequently, Inv. Freeman testified that he concluded the "443 number was made up from the cell phone owned by the appellant." "Investigator Sylvester sent a subpoena to 'Pinger' and it returned the information that led back to Mr. Simpkin's phone. See (Tr. p. 94, lines 4-8) Also, Inv. Freeman testified: "An IMEI [International Mobile Equipment Identifier] numbers 99000592541985 was specific to a cell phone and that specific cell phone was owned by Mr. Simpkins." See (Tr. p. 95, lines 2-5)

So, armed with the alleged information Inv. Ronald Sylvester subpoenaed from "Pinger" e.g., a IMEI number connecting solely to Model SM-S920L (GP) the appellant's cell phone, Inv. Freeman swore on Direct by Ms. Hall:

Q. Okay. So at the time that you went out to Spider Webb Road (appellant's residence), you had 'records showing specific cell phone ID number what created that (Pinger) account?'"

A. "That's correct."

Q. Okay. And at the time you knew finding a physical phone to match that ID was very important?

A. "Absolutely."

See (Tr.p. 95, lines 6-12)

The appellant contends that this Court of Appeals can and should find that his Fourth (4th) Amendment guarantee was violated for the below mention material facts and evidence:

1. There was never any allegation that appellants cell phone was seized as a result of "Hot Pursuit. Nor was Used or attempted to be used as a weapon;

2. Prior to leaving Richmond County Georgia and entering Beach Island, South Carolina Investigator Freeman was clearly aware that he did not possess legal authority to 1.) stop; 2.) frisk; 3.) pat down; 4.) question; 5.) arrest; 6.) and certainly seize any property belonging to the appellant.
See (Tr.p. 101, lines 16-21)

Mitchell Freeman - Cross by Mr. Thompson

Q. Investigator Freeman, at the time this happened on April 4, 2017 where were you employed?

A. Richmond County Sheriff's Office.

Q. And did you have Jurisdiction in South Carolina?

A. "I did not."

Tr. p. 150, lines 12, 22

Q. So why didn't you get a search warrant for it?

A. "We knew we didn't have Jurisdiction in South Carolina."

(Tr. p. 122, lines 4-9)

The Court: "He's not a policeman here, he's just a regular Joe Blow on the streets of Aiken County with no authority --- I'm not sure the extent of what he's claiming, but specifically he said he has no authority to gather evidence or to seize a phone in South Carolina."

(Tr. p. 212, lines 23 - p. 213 lines 1-12).

Mitchell Freeman - Cross by Mr. Rudnick

Q. So you were working with the Richmond County Sheriff's Office?

A. "That's correct."

Q. And you were working as an investigator in that capacity?

A. "Yes."

Q. And you were a licensed Georgia police officer?

A. "That's correct."

Q. So, outside of Georgia you wouldn't be able to go to a magistrate and swear out a warrant correct?

A. "Correct."

3.) Being conscience of the facts that he was not a licensed police officer in South Carolina, didn't have legal authority to investigate or arrest the appellant, didn't have legal authority to search or seize property from appellant, didn't have a signed voluntary Consent Form to search or seize appellant's cell phone nor, had a valid signed search warrant granting permission to search and seize property from the appellant by a magistrate judge from South Carolina; didn't prevent Inv. Freeman from descending on the appellant, taking his cell phone, and going back to Georgia.

See (Tr.p. 104, lines 21-23)

Mitchell Freeman — Cross by Mr. Thomas

Q. And you never got a Consent Form from Mr. Simpkins?

A. "Mr. Simpkins wouldn't help us out. He wouldn't talk to us. He wouldn't give us any information."

(Tr. p. 105, lines 12, 14-17)

Q. So why didn't you get a search warrant for it? To seize the telephone, why didn't you get a search warrant?

A. "You don't need a search warrant."

(Tr. p. 99, lines 10-20)

Mitchell Freeman - Direct by Ms. Hall

A. No, he didn't put the passcode in.

Q. He didn't?

A. He started pretending like he didn't know it.

Q. Okay.

A. So he never unlocked the phone. He was pretending like he didn't know the code, so we kind of left it at that.

Q. Okay. So you actually let him have the phone back?

A. I handed him the phone and after he started pretending like he didn't the code, "I got the phone back from him and we left the area."

(Tr. p. 105, lines 1-11)

Mitchell Freeman - Cross by Mr. Thompson

Q. Okay. And your understanding is that you had exigent circumstances, why?

A. "Because he could have destroyed the phone. The phone is in his hand. I see the phone. The phone is right there. 'So, if I let him walk off with that phone, I no longer have that phone,' so I need to preserve that phone and everything in it, so at that point, "we take the phone,"

Q. And you were there investigating and you were very interested in getting the telephone?

A. Absolutely.

Simply stated Investigator Freeman was not going to leave the appellant's residence without the cell phone albeit unconstitutional, robbery or, by any other unlawful means necessary.

4.) Final, this Court of Appeals can and should find that the appellant's Fourth Amendment rights were violated behind the State's Expert Witness, Special Agent Matthew Wilde, employed by the FBI in Baltimore, Maryland effectively annihilated Investigators' Freeman and Sylvester testimony about records of an "IMEI" Pinger number linking back to the appellant's cell phone.

See (Tr. p. 325, lines 9-12)

Matthew Wilde - Cross by Mr. Rudnick

Q. Okay. And the call records that you received, you received those directly from Verizon and T-Mobile?

A. "I received them from Government, From the State."

(Tr. p. 328, lines 12-17)

Q. And so you can't determine whether or not a phone is actually using an application like Pinger, right?

A. "Correct."

Q. Okay. And you can't determine whether or not Antonio's phone was using Pinger, right?

A. "Correct."

Last, see (Tr. p. 319, lines 14-16

Matthew Wilde — Direct by Ms. Hall

Q. So, that's why Antonio Simpkins call detail records don't show these calls being routed to his phone?

A. "That's correct."

In short, Investigator Freeman's whole basis for the exigent circumstance allegation is nothing but a fabrication of false statements of non-existent facts and evidence. Essentially, when Inv. Freeman trespassed onto the appellant's property, robbed him of his cell phone, and left Beach Island, South Carolina and went back to Georgia is a textbook violation of Appellant's Fourth (4th) Amendment guarantee against protection of privacy and protection against unreasonable search and seizure. Statute Section 17-13-140 (3) and (4) S.C. Code Ann. (1976).

Therefore, Trial Court abused its discretion by erring in determining an Exigent Circumstance permitted Inv. Freeman to seize appellant's cell phone because its ruling was based on an error of law and founded in factual conclusions without evidentiary support. See State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) "Search and seizure of the person becomes legal when grounds for arrest and accusation have been discovered, and the law is in the act of "subjecting the

the body of the accused to its physical dominion." 414 U.S. at 232, 94 S.Ct. 467 (Quoting People v. Chiagles, N.Y. 193, 197, 142 N.E. 583, 584 (1923)).

Equally important, under Riley v. California, 134 S.Ct. 2473; Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.E. 2d 685 (1969); and U.S. v. Wurie, 728 F.3d 1 (2013), Investigator Freeman's assertion that Exigent Circumstance existed out of fear the appellant would destroy the phone or wipe stored information is meritless. Investigator Freeman gave the cell phone back to the appellant to unlock it. Certainly, no officer would give evidence to a suspect he feared would destroy it.

Incidentally, remote wiping occurs when a phone, connected to a wireless network, receives a signal that erases stored data. This can happen when a third party sends a remote signal or when a phone is programmed to delete data upon entering or leaving certain geographic areas (so called "geofencing"). With respect to remote wiping the Government's primary concern turns on the actions of a third party who are not present at the scene of arrest.

There was little to no reason to believe wiping was prevalent. The State gave no examples of wiping triggered by an arrest. Similarly, the opportunity for officers to search a password-protected phone before data becomes encrypted is quite limited. Law enforcement officers are very unlikely to come upon such a phone in an unlocked state because most phones

lock at the touch of a button or, as a default, after some "very short" period of inactivity. See, e.g., iPhone User Guide for iOS 7.1 Software 10 (2014)

In any event, as to wiping, law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network. There are at least two simple ways to do this.

First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. See Ayers 30-31 Such devices are commonly called "Faraday bags," after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil. See Brief for Criminal Law Professors as Amici Curiae 9.

In fact, a number of law enforcement agencies around the country already encourage the use of Faraday bags. See, e.g., Department of Justice, National Institute of Justice, Electronic Crime Scene Investigation: A Guide for First Responders 14, 32 (2d ed. Apr. 2008); Brief for Criminal Law Professors as Amici Curiae 4-6.

However, before the trial court could reach any matters of wiping, encrypting or appellant destroying the cell phone, Investigator Freemam must establish that he had

Jurisdiction, was licensed or possessed some sort of legal authority in South Carolina to stop, pat down and seize the appellant's cell phone and return to Richmond County Georgia. Otherwise, exigent circumstance was inapplicable to any of Investigator Freeman's unlawful conduct. See Fourth Amendment.

CONCLUSION

For all the forgoing reasons, Appellant's conviction and sentence should be reversed and a new trial granted.

Dated 3/31/2020.

Respectfully Submitted,
Antonia Simpkins

STATE OF SOUTH CAROLINA
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Appellant.

PROOF OF SERVICE

I, Antonio Simpkins, certify that today this 31 day of March, 2020, served the opposing party with the Appellant's Pro Se Brief, by depositing same in the United States mail, postage prepaid, as follows:

Mr. Alan McCroy Wilson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Dated 3-31-20.

Respectfully Submitted,
Antonio Simpkins ✓

Sworn and Subscribed
this 31st day of March, 2020

Nancy C. Cobb
Notary Public

My Commission Expires 1/23/2022.

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