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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Appellate Case No. 2020-000049

The Honorable Thomas Anthony Russo

The State of South Carolina.....Respondent,

v.

Royal Daniel Williams, III.....Appellant.

INITIAL BRIEF OF APPELLANT

Lawrence W. Long, III
Elizabeth Franklin-Best, P.C.
Bar #105052
2725 Devine Street
Columbia, South Carolina 29205
lawrence@franklinbestlaw.com
(803) 445-1333

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com
(803) 445-1333

Attorneys for Appellant.

Other Counsel:
William M. Blitch, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Attorney for Respondent.

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in not suppressing the fruits of the February 19, 2016 search warrant that allowed law enforcement to search through the phone records of Royal Williams when the original warrant was stale and law enforcement did not seek to receive an additional warrant before gathering the correct information from Sprint in violation of Mr. Williams's Fourth Amendment right to be free from unreasonable searches and seizures?
- II. Whether the trial court erred when it allowed the State to obtain a buccal swab from Mr. Williams when the State lacked probable cause to believe that Mr. Williams murdered the victim?
- III. Whether the trial court erred when it granted a continuance to the State to allow it to remedy an evidentiary issue when Mr. Williams had been held in pre-trial detention for three years awaiting trial?
- IV. Whether the trial court erred in not dismissing Mr. Williams's case based on the State's violating Mr. Williams's right to a speedy trial?

STATEMENT OF THE CASE

Mr. Williams was indicted on one count of murder on April 6, 2017 by the Florence County grand jury. He was tried before the Honorable Thomas Russo and a jury between September 9-14, 2019. Mr. Williams was convicted and received a sentence of life in prison. Mr. Williams was represented by Thurmond Brooker. The State was represented by Ed Clements.

This appeal timely follows.

RELEVANT FACTS

Royal Daniel Williams III (Mr. Williams) was charged and convicted of the murder of Sherilyn Joseph (Ms. Joseph). Tr. 10. On January 23, 2016, at around 11:00pm, Ms. Joseph's body was discovered by her mother, Ms. Patricia Stewart on the floor of her apartment in Florence County, South Carolina. Tr. 178. Ms. Stewart was responsible for babysitting Ms. Joseph's son while Ms. Joseph was at work. Tr. 195. Ms. Joseph normally worked until two or three in the afternoon, drove to pick up her child from Ms. Stewart's house and then returned home. *Id.* Additionally, while working, Ms. Joseph would often talk to her son on FaceTime. *Id.* On the day of the incident, Ms. Stewart had not heard from Ms. Joseph, nor was she on time to pick up her son from her house. Tr. 197. Ms. Stewart became worried and went to Ms. Joseph's house, accompanied by her sister, to find Ms. Joseph. *Id.* It was ten o'clock in the evening when Ms. Stewart walked into the home and found her daughter lying on the floor of her apartment. Her sister dialed 911 while Ms. Stewart attempted to give CPR. Tr. 198. According to the coroner, Ms. Joseph had been deceased since approximately 4:00pm, with the cause of death being one gunshot to the head. Tr. 178. Ms. Stewart informed the court that she was not present at the murder and did not know if her daughter had "beef" with anyone. Tr. 200.

The Florence County Sheriff's Office (FCSO) began taking DNA samples from around Mr. Joseph's apartment. This led to them finding samples that matched Mr. Williams, one from the headrest and interior door handle on the passenger side of Ms. Joseph's vehicle and the other from a condom in the trashcan inside the apartment. Tr. 386. There were no signs of forced entry into the apartment, nor were there any signs of a struggle. Tr. 177.

In connection with its investigation, the sheriff's office obtained a buccal swab from Mr. Williams on February 4, 2019 and it obtained a search warrant for Mr. William's cell phone records from Sprint Wireless. Tr. 75. This second search warrant allowed the sheriff's office to go through the Sprint cell phone records of Mr. Williams while granting law enforcement the ability to track his whereabouts via cell tower data on the day in question. After law enforcement arrived on the scene and discovered Ms. Joseph's body, they found her cell phone and starting sifting through it for any evidence. They found multiple phone calls between Ms. Joseph and a number that had been deleted, which was later identified as Mr. William's phone number. FCSO used the time of the phone calls, together with the fact that the number had been deleted from the phone to secure the warrant.

Around the same time as Ms. Joseph's death, it was discovered that a taxi had been called to Ms. Joseph's address to take someone to Darlington, South Carolina. Tr. 179, 180. Mr. Williams has two homes in this area that he frequents occasionally, 225 Plum Street, which is the home of Leron Whitten (an acquaintance) and 326 Orange Street, which is the home of Mr. Williams's brother. Tr. 53, 574. There were four people in the taxi at the time: Lakeya Bacote (the driver), Linda Jones, a third passenger, and a mysterious "hooded man." Tr. 514-517. Linda was in the back seat of the cab and sitting beside her was the man with the hood that Ms. Bacote picked up from Ms. Joseph's home. Tr. 514, 515. Neither Ms. Bacote, nor Ms. Jones were able to recognize

anything about the “hooded man” except for what his hair looked like and what he was wearing. Tr. 519, 546. Ms. Jones (as the person who got the best look at the passenger, according to Ms. Bacote) later sat down with a sketch artist to draw this “hooded man.” Tr. 532. The sketch artist for SLED was Ms. Deborah Goff. Tr. 527. She has been with SLED as a sketch artist for thirteen years. *Id.* She was qualified as an expert in the field of forensic identification. Tr. 528. She testified to having met with Ms. Jones to draw a sketch of the man from the taxi. *Id.* She drew the sketch exactly as described by Ms. Jones. Ms. Jones failed to mention the fact that the man in the taxi was wearing a hoodie. Therefore, Ms. Goff did not include one in her initial sketch of the man.

Ms. Jones spoke with Investigator McFadden during the police investigation. Ms. Jones was presented with various photographs of men who resembled the sketch of the "hooded man" but she did not identify anyone as having been in the taxi with her that evening. Tr. 524, 525.

As mentioned earlier, FCSO obtained a warrant for a buccal swab from Mr. Williams. Tr. 64. The DNA located on the condom in the trashcan in the victim's house matched Mr. Williams. He was subsequently served a warrant for the murder of Ms. Joseph in March 2016.

I. The trial court erred in not suppressing the fruits of the February 19, 2016 search warrant that allowed law enforcement to search through the phone records of Royal Williams because the original warrant was stale and law enforcement did not obtain an additional warrant before gathering the correct information from Sprint in violation of Mr. Williams’s Fourth Amendment right to be free from unreasonable searches and seizures.

At a pre-trial hearing on June 17, 2018, defense counsel argued to suppress the fruits of the February 19, 2019 search warrant that secured Mr. Williams's cell phone records and tracking information. Counsel argued that the warrant (originally executed in March 2016), was now stale because the State did not obtain a new warrant after ten days when it failed to obtain the proper information. Pre-Trial Transcript 52. The court denied the motion, holding that the warrant was

valid because it had been executed within ten days of its issuance, even though the information provided by Sprint was not the information that law enforcement had intended to obtain.

According to the Supreme Court decision in *Carpenter v. United States*, an individual maintains a legitimate expectation of privacy, for Fourth Amendment purposes, in the record of his physical movements as captured through cell-site location information. *Carpenter v. United States*, 585 U.S. ___, 138 S. Ct. 2206 (2018). The government must generally obtain a search warrant supported by probable cause before acquiring cell-site location information. *Id.* at 2222. The governing law for issuance, execution, and return of search warrant for property connected with the commission of a crime issued in the State of South Carolina is found in SC Code of Law Ann. §17-13-140 (2016). This section unambiguously states that any warrant issued hereunder shall be executed and return made *only within ten days after it is dated*. S.C. Code Ann. § 17-13-140 (2016) (emphasis added). A search warrant will be invalidated for failure to observe the statutory ten-day requirement for execution and return of a warrant only if defendant can show he was prejudiced by the failure. *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007). The Fourth Circuit has explained that “there is no question that time is a crucial element of probable cause.” *United States v. McCall*, 740 F.2d 1331, 1335 (4th Cir. 1984). This is because a judge may only issue a warrant if it is based on “allegations of ‘facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time.’” *Id.* at 1335-36 (quoting *Sgro v. United States*, 287 U.S. 206, 210 (1932)); *State v. Winborne*, 273 S.C. 62, 254 S.E.2d 297 (1979).

On February 19, 2016, law enforcement obtained a search warrant to obtain the cell site information for Mr. William’s cell phone number from Sprint Wireless. The warrant was executed on February 23, 2016, and the information from the warrant was returned later that same day. In March 2019, over three years later, law enforcement discovered that the information obtained from

the 2016 Sprint warrant was incorrect and contacted Sprint to obtain the correct information pursuant to the original search warrant. According to the decision in *Carpenter*, a valid search warrant is required to obtain someone's location through a cell provider. South Carolina law provides that a warrant is only valid if executed and returned upon ten days after its issuance. Therefore, when Florence County sought the correct information *over three years* after the issuance of the original warrant, that warrant was stale and no longer valid. The proper procedure would have been to seek a new warrant for the correct information from the magistrate judge.

Since the warrant was no longer valid, the fruits of the warrant should have been suppressed pursuant to *Weaver* and as a violation of Williams's right to be free from unreasonable searches and seizures pursuant to the Fourth Amendment of the Constitution. Respectfully, this Court should reverse Williams's conviction and sentence.

II. The trial court erred when it allowed the state to obtain a buccal swab from Royal Williams because the state lacked probable cause to believe that he murdered the victim.

Trial counsel also argued to suppress the buccal swab that law enforcement obtained from Mr. Williams because there was insufficient evidence to suspect that Mr. William's committed the victim's murder. Tr. 60. Counsel further argued that the warrant was conclusory based on the standard set forth in *Illinois v. Gates*, 462 U.S. 213 (1982). The court denied the motion, stating that there was no issue with the warrant or the process in which it was obtained. Tr. 160.

A search warrant may be issued only upon the finding of probable cause. *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006).

"The task of the issuing magistrate [in evaluating the existing of probable cause] is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit [of a search warrant] before him [or her], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay

information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (quoting *Illinois v. Gates, supra*).

Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. *Id.* In *Aguilar v. Texas*, 378 U.S. 108 (1964), the Supreme Court held that law enforcement's statement that appellant had heroin in his home was conclusory and did not amount to the probable cause required for a search warrant of his home. Although the ultimate measure of the constitutionality of a government search is reasonableness, warrantless searches are typically unreasonable where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing. *Carpenter*, 138 S. Ct. at 2221. In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement. *Riley v. California*, 134 S. Ct. 2473, 2482 (2014). When deciding whether evidence can be gathered from a person's body, *State v. Register*, 308 S.C. 534, 419 S.E.2d 771 (1992) controls in South Carolina. In this case, the court held that:

[W]here a warrant authorizing a bodily intrusion into a potential witness is sought, the State must initially show that there is probable cause to believe a crime has been committed, and probable cause to believe that it was committed by a particular subject. Once the court has found the existence of probable cause on both grounds, the State must then show (1) a clear indication that material evidence relevant to the question of the suspect's guilt will be found, and (2) that the method used to secure this evidence is safe and reliable.

308 S.C. at 537-38; 419 S.E.2d at 773.

Also, In *Schmerber v. California*, 384 U.S. 757 (1966), the United States Supreme Court held that minor intrusions beyond the body's surface will be permitted in stringently limited conditions, because such intrusions may readily offend those principles of dignity and privacy which are protected by the Fourth Amendment.

The court must balance the seriousness of the crime, the importance of the evidence the investigation, and the unavailability of alternative, less intrusive means of obtaining evidence, on one hand, against the concern for the potential witness'

constitutional right to be free from bodily intrusion on the other. *In re Snyder*, 308 S.C. 192, 417 S.E.2d 572 (1992).

In *Register*, the trial judge held the need to identify the perpetrator in a violent homicide outweighed the prejudice. *Id* at 771. The Court of Appeals reversed the decision, finding that the trial court completely failed to properly balance the necessity for acquiring evidence against the constitutional safeguards of bodily intrusions searches and seizures. *Register*, 419 S.E.2d at 773. Furthermore, the court held that the trial court's order failed to find either the existence of probable cause or a clear indication that the requested evidence is relevant to the question of Register's guilt.

Here, similar to the *Register* case, Mr. Williams challenged the *Schmerber* order due to lack of probable cause. Clearly, according to *Snyder*, *Schmerber* and *Register*, the court prioritizes the suspect's Fourth Amendment rights against an unreasonable search and seizure over law enforcement's ability to collect evidence from just anybody. In this situation, the judge erred because the State failed to meet their strenuous burden of securing probable cause that Mr. Williams was guilty of any crime, enough to go to the judge and secure a buccal swab. Although Mr. William's DNA was found in a condom at the scene and in and around the victim's car, that fact alone proves no wrongdoing. At most it proved that Mr. Williams was in the victim's apartment at some point.

Additionally, issuing the search warrant violated the Supreme Court precedent set forth in *Illinois v. Gates* because the prosecution used conclusory statements in their warrant application without allowing the judge to evaluate the evidence and reach the conclusion on his own. This search warrant was granted without any showing that Mr. Williams committed any sort of crime. Therefore, because the State failed to meet its burden for a search warrant of the body, as laid out in *Register*, the evidence of the buccal swab should have been suppressed. The trial court judge

erred in allowing the State to obtain a buccal swab from Mr. Williams. This Court should reverse Williams's convictions.

III. Whether the trial court erred when it granted a continuance to the state to allow it to remedy an evidentiary issue when Royal Williams had been held in pre-trial detention for three years awaiting trial.

Trial counsel argued at a pretrial hearing held on June 17, 2018 that the State's request for a continuance should be denied. Counsel stated that the continuance was unfair and would only prejudice the defendant. Tr. 54. The court granted the continuance, holding that the continuance for the State would ensure that they had a fair and impartial trial, the court also found no evidence of prejudice. *Id at 57, 58.*

The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion. *State v. Colden*, 372 S.C. 428,434, 641 S.E.2d 912, 916 (S.C.App. 2007). In *State v. Squires*, 248 S.C. 239, 149 S.E.2d 601 (1966), the South Carolina Supreme Court found, in pertinent part that “there is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points in their behalf could have been raised had more time been granted for the purpose of preparing for trial. In *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989), the South Carolina Supreme Court used the *Squire* case to find that a continuance is necessary only where the continuance will provide something worth “evidentiary value” and “no real harm would have befallen the adverse party” from the continuance.

In this instance, the trial court abused its discretion when it granted a continuance to the state to correct an evidentiary issue. In pretrial motions, the state argued that the granting of the continuance was fair because the appellant received a continuance earlier in the proceedings. The

difference is, however, that Mr. Williams's attorney only had four months to work on the case when it asked the judge for its continuance. The State had three years to pull its case together. The whole time Williams remained in pre-trial detention. It was an abuse of discretion on the trial court's part because the state produced no evidence that any new evidence of value would be produced because of this continuance. Meanwhile, Mr. Williams remained in pre-trial detention without a bond when the State had years to pull its case together. The trial court abused its discretion in granting the continuance and simply should have not allowed the State to correct its "evidentiary issue." Respectfully, this Court should reverse Mr. Williams's convictions and sentence.

IV. The trial court erred in not dismissing Mr. William's case based on the state's violation of his right to a speedy trial.

At the pre-trial hearing, trial counsel argued the court should dismiss the indictments against Mr. Williams because his three-year pre-trial detention violated his right to a speedy trial. Tr. 134. Counsel argued a violation of Mr. Williams's right to a speedy trial pursuant to *Barker v. Wingo*, 407 U.S. 514 (1972). The court held that, although the timing was concerning, the facts did not meet the criteria set forth for a violation of Mr. Williams's right to a speedy trial. Tr. 150.

The Sixth Amendment of the United States Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed. *U.S. Const. amend VI*. One of the main goals of the speedy trial right is to prevent undue trial incarceration. *Id.* The Supreme Court has held four factors as relevant when deciding whether an appellant has been deprived on their constitutional right to a speedy trial. Those factors are (1) length of delay; (2) reason for the delay; (3) defendant's assertion of the right; and (4) prejudice to the defendant. *State v. Palmer*,

415 S.C. 502, 783 S.E.2d 823 (Ct. App. 2016). A speedy trial...simply means a trial without unreasonable and unnecessary delay. *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

In *Barker v. Wingo*, the Supreme Court created a balancing test to determine whether a defendant's right to a speedy trial has been violated. First, there must be a determination that the delay is presumptively prejudicial. *Id* at 482. When analyzing delay, the Supreme Court held that the clock starts running on a defendant's speedy trial right when he is indicted, arrested, or otherwise officially accused. *Langford*, 735 S.E.2d at 482. There were twenty-three months in between his indictment and his time for trial with facts that the court deemed not that complicated. *Id*. Therefore, the South Carolina Supreme Court deemed the delay to be presumptively prejudicial. After there appears to be a delay, next the court looks at why. According to the Supreme Court, "different weights should be assigned to different reasons." *Barker*, 92 S.Ct. at 2192. A deliberate attempt to delay trial to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than the defendant. *Id*. Third factor is the defendant's responsibility to assert his rights. *Id*. The last factor is the prejudice to the defendant, the court in *Barker* identified three interests that this is meant to protect (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused and (iii) to limit the possibility that the defense will be impaired. *Id*.

In this case, this Court should find that Williams's rights to a speedy trial, as protected by the Sixth Amendment, were violated based on the Supreme Court test set forth in the *Barker* case. The first prong of the balancing test is that the delay is presumptively prejudicial. In *Langford*, the *Barker* analysis was used to prove that there was not a due process violation. In *Langford*, there

was a twenty-three-month delay in bringing defendant to trial on charges of armed robbery, kidnapping, burglary, and civil conspiracy. *Id* at 483. This was held to be presumptively prejudicial because although there were multiple charges, the facts were not complicated. Here, similar to *Langford*, the facts of the case are not complicated and there was a three-year delay between indicted and when Appellant was brought to trial. The delay is presumptively prejudicial. The next prong in the analysis is the reasoning as to why the delay occurred. As mentioned earlier the Supreme held that different weights should be assigned for different reasons. Contrary to the facts in *Langford*, in this case, the delay would be what the Supreme Court classifies as a “neutral mistake” by the State. The state argued that they needed the continuance to correct an evidentiary mistake and as the state claimed in *Barker*, this factor weighs less heavily, but nonetheless on the State because the burden must weigh on the government rather than the defendant. *Barker*, 92 S.Ct. at 2192. Therefore this Court should construe this factor in favor of Mr. Williams. Third, is the defendant’s assertion of the right to a speedy trial. Although Mr. Williams did not file a motion asserting his right to a speedy trial, that fact alone does not defeat his claim. The onus remains on the State to bring a defendant to trial. Lastly, the court considers the prejudice to the defendant. In *Langford*, the state held that there was no prejudice to the defendant because he caused the delay by attempting to coerce the witness out of testifying. In contrast, Mr. Williams did nothing to contribute to the delay.

In this case, Mr. Williams had been in pretrial incarceration for three years due to no fault of his own. Therefore, the fourth prong should go in favor of Mr. Williams. Using the test laid out in *Barker* and shown through *Langford*, Mr. Williams meets all four prongs of the case and the trial court erred in not dismissing this case for violating his Sixth Amendment right to a speedy trial. Respectfully, this Court should reverse Mr. Williams's convictions and sentence.

CONCLUSION

Respectfully, this Court should reverse Mr. Williams's convictions and sentence.

Respectfully submitted,

/s/ Lawrence W. Long, III

Elizabeth Franklin-Best, P.C.
Bar #105052
2725 Devine Street
Columbia, South Carolina 29205
lawrence@franklinbestlaw.com
(803) 445-1333

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this initial brief and designation of matter on William Blich of the South Carolina Attorney General's office via email at wblitch@scag.gov on this date, November 10, 2021.

/s/ Lawrence W. Long, III