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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Florence County
Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case Tracking No. 2020-000049

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The State, Respondent,

vs.

Royal Daniel Williams, III, Appellant.

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# INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE

The Florence County Grand Jury indicted Appellant for murder during the April 2017 term. The case was scheduled for trial in June 2019. On June 13, 2019, the trial court heard pre-trial motions. A jury was selected on June 17, 2019, and further pre-trial matters were discussed. As a result, the State sought and was granted a continuance and the jury was dismissed. A hearing on the State's motion for a Schmerber Order was held and the Order was granted June 18, 2019.

On September 9, 2019, Appellant proceeded to trial. The jury found Appellant guilty of murder, and he was sentenced to life without parole. Appellant filed a motion for new trial which was denied.

## STATEMENT OF FACTS

On Friday, January 22, 2016, Sherilyn Joseph (Victim) dropped her child off with her mother, Patricia Stewart, prior to heading to work at Starbucks. The child was planning to spend the night with Stewart. (T.194-196; R.___). On Saturday, Stewart expected Joseph to contact her to speak to her son even though Joseph would be at work. Joseph never called. Later on Saturday, Stewart tried contacting Joseph, as did several other family members. (T.196-197; R.___). After getting no answer or response all day, Stewart left to go to Joseph's apartment around 10:00 pm to see if she could locate her daughter. (T.197; R.___).

After picking up her sister to go with her, Stewart got to Joseph's apartment and went to the door. The door was open. She walked into the dark room and hit something with her foot. Upon turning on the light, she found Joseph lying dead on the floor. (T.197; R.___). Stewart's sister called 911. Stewart began CPR and indicated blood was coming out of Joseph's nose and that she was not moving. (T.198; R.___).

The deputy coroner, Bo Myers, testified he arrived on scene and began examining the body. He noted a gunshot wound to the left side of the forehead. (T.221; R.___). Additionally, he described the body's lividity, indicating blood was settling. He explained time of death for Joseph was sufficiently prior to his arrival to allow for the blood to settle. (T.222-224; R.___). He also explained the body was cold relative to its environment, which meant that she had been dead for more than a few hours. (T.224-225; R.___). Finally, he explained rigor mortis was about half-way through its process meaning she had been dead more than a few hours but less than days. (T.227; R.___). He later testified that based on his examination and information collected by the investigators, he "determined that the presumed time of death was approximately 4 o'clock that afternoon on the same date." (T.252; R.____).

Dr. Angela Phillips performed the autopsy on Joseph. She found cause of death to be a gunshot wound which pierced the skull, went through the brain, and ended up under the skin on the back of the head. (T.273; 278; R.___). She also noted there were no defensive wounds. (T.275; R.___).

Seargent Clendenin assisted in processing the scene of the crime. He indicated the passenger seat was laid back. They swabbed the seat looking for DNA. (T. 302; R.___). He noted a comforter was located near the victim. There was a hole with a blood smear on the comforter. Wrapped up inside the comforter was a pillow. Additionally, the comforter had a burnt area and tested positive for gunshot residue. (T.304; 309; R.___). A bullet hole went through the pillow and comforter. (T.304; R.___). Additionally, he indicated a used condom was located in the wastebasket beside the victim's bed. (T.305; R.___).

John Barron, a DNA analyst, testified he compared DNA from swabs of the passenger side of the victim's car and from the used condom with a sample from Appellant. He testified it is 2,800 times more likely that Appellant contributed to the DNA mixture found on the headrest than a random person. (T.422; R.___). On the door handle, it is 120,000 times more likely Appellant is included that a randomly selected person. (T.422-423; R.___). Looking at the condom mixture, it is 12,500 times more likely to include Appellant than a random person. (T. 423; R.___). Barron also indicated they looked solely to the Y chromosome and determined it was 1,850 times more likely that Appellant contributed to the mixture than another randomly selected male. He also indicated you could combine the possibilities and conclude it is 23 million times more likely to be Appellant versus a random person. (T.424; R.___).

Speedy Cab received a call to dispatch a cab to the victim's residence at 3:40 PM. (T.503-504; R.___). Lakeya Bacote was the cab driver. She picked up the gentleman at the victim's

residence. She initially had trouble locating the pick-up location, so she called the number given — a 704 area code number. The person she picked up told her what to look for and then called her back from another phone number -- an 803 area code number. Bacote already had a fair riding with her, her cousin Linda Jones. (T.543-546; R.___). The gentleman got in and rode in the back beside Jones. She noted he had textured or wavy hair at least in the front since he had a hoodie on. When he got in the cab, he was carrying a black bookbag with travel-sized toiletries. (T.549; R.___). Bacote indicated he was headed to Doneraile Street in Darlington, but instead got off on a side street. (T. 542-543; 547; R.___). Several days later she got another call from the same person for a cab to pick him up at 225 Plum Street. She said this time when she picked him up, he had shaved his head. (T.552; R.___).

Linda Jones was riding with Bacote at the time she picked the gentleman up from the victim's residence. (T.514; R.___). Jones was later contacted by law enforcement to see if she could provide details for a sketch. (T.517-518; R.___). They completed a sketch based on her memory of the person who sat beside her from Florence to Darlington. (T.533-534; R.___).

Leron Whitten lived at 225 Plum Street, an address near where the gentleman Bacote picked up got dropped off and the address where the gentleman was picked up the second time Bacote saw him. Royal Williams left a black bookbag at Whitten's house. (T.574-575; R.___).

Investigator Collins obtained security footage from a residence near the victim's home. The video showed the victim's car returning home and then later a van, which appeared to be a taxi, arriving and leaving the victim's residence. (T.647-648; 676-679 R.___). No other movement around the residence was shown on the video. Based on his investigation, he was able to contact Jones who had been in the van and arrange the sketch. The jury had the sketch to compare to

Williams as well as photos of Williams from around the time of the murder. (State's Exhibits 12, 19 and 20).

Investigator Collins also reviewed the cell phone records from the victim. (State's Exhibit 7). They indicated numerous communications with a specific number. As a result, he obtained subscriber information for the number, and it was connected to Appellant. (T.665; State's Exhibit 10, pages 1-5; R.___). The contacts between Appellant and the victim began on January 14 and ended January 22, the day before her murder. (T.665-666; R.___). After 383 contacts between the two, there were no further contacts or attempts by Appellant after January 22. (T.667; R.___). According to the cell phone records both the victim's and Appellant's phones were in use around Florence during the afternoon of the murder. (T.667-669; R.___). While the victim's phone does not have any additional locations, Appellants shows contact with a cell tower in Darlington, roughly in the area where he was dropped off by the cab. (T.670; R.___).

Investigators Collins and McFadden began going to locations of interest. They went to 225 Plum Street, the location where Whitten lived. He was ultimately excluded as a suspect. Thereafter, they went to an address in Bennettsville. Appellant's grandmother lived at this address. They also went to another address which ultimately was determined to be the residence of Appellant's brother. As Investigator McFadden indicated, all the leads and trails followed led back to Appellant. (9/13T.29-30; R.___).

## ARGUMENT

### I. The trial court properly denied Appellant's motion for a directed verdict where the State produced sufficient evidence to warrant sending the case to the jury on the charge of murder.

Appellant contends the trial court erred in denying his motion for a directed verdict. The State presented sufficient evidence to warrant sending the case to the jury. When viewed in the light most favorable to the State, the evidence – in particular the cell phone records, sketch provided by the other passenger of the taxi, and other circumstantial evidence – linked Appellant to the murder of Joseph. The trial court did not err in denying the motion because a rational trier of fact could find all the necessary elements to convict Appellant of murder beyond a reasonable doubt.

#### Standard of Review

"On appeal from the denial of a directed verdict, [the Appellate] Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As the South Carolina Supreme Court recently reiterated: "[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)).

"Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Id. "Accordingly, in ruling on a directed verdict motion where the State relies on

circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. See State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding "any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt" in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

**Merits**

The facts of this case, as discussed above, presented sufficient evidence from which the jury could conclude Appellant committed the murder of Joseph. While primarily circumstantial, the evidence established all the elements of murder.

"Murder" is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-10 (Supp. 2020). As a result, the main elements at issue in this case are who killed Joseph and whether the killing was with malice aforethought.

> "'Malice' is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998). "It is the doing of a wrongful act intentionally and without just cause or excuse." Tate v. State, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002). Malice can be inferred from conduct which is so reckless and wanton as to indicate a depravity of mind and general disregard for human life. State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675 (1957). In the context of murder, malice does not require ill-will toward the individual injured, but rather it signifies "a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief." Id. at 662, 99 S.E.2d at 675–76 (quoting State v. Heyward, 197 S.C. 371, 375, 15 S.E.2d 669, 671 (1941)).

In re Tracy B., 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010). Additionally, "[a]lthough malice must be aforethought, there is no requirement that it must exist for any appreciable length

of time before the commission of the act. It may be conceived at the very moment the assault occurs." State v. Wilds, 355 S.C. 269, 277, 584 S.E.2d 138, 142 (Ct. App. 2003) (citations omitted).

The killer rolled a pillow inside a comforter, pressed the gun to the comforter such that it left a burn mark on the comforter, pulled the trigger, and shot Joseph in the head. Essentially, the killing in this case was an execution. The mere facts of how the killing occurred indicate a level of planning as well as a wicked or depraved intent to injury Joseph. See e.g., State v. Stanko, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) (finding malice was shown by the victim being shot while defendant used a pillow as a silencer), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019); Smith v. State, 292 Ga. 620, 621, 740 S.E.2d 158, 161 (2013) (finding the evidence presented at trial in the light most favorable to the State was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Smith was guilty of the malice murder of his wife where the theory was he used a pillow around her head to silence the gunshot). Even without the materials used to silence the sound of the weapon being fired, the mere use of a deadly weapon is sufficient for the jury to infer malice when considered in the light most favorable to the State. See State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019) ("For example, if evidence is introduced that the deed was done with a deadly weapon, the State is free to argue to the jury that it should infer the existence of malice based on that fact and any other facts that would naturally and logically allow a jury to conclude the defendant acted with malice aforethought."). There is no doubt the evidence in the light most favorable to the State establishes that the killing of the victim occurred with malice aforethought.

The deputy coroner indicated time of death was estimated to be approximately 4:00 PM and the pathologist indicated there was no evidence to alter that estimation. This determination

was made based on her lividity, state of rigor mortis, and body's temperature relative to its environment—all of which was presented to the jury.

Additionally, the evidence indicates that the defendant was the person who killed Joseph. Appellant and Joseph spent the afternoon together after she got off work. A used condom with Appellant's DNA was located in the wastebasket beside her bed. Further, their cell phones connected to many of the same towers at similar times throughout the day. However, Appellant's cell phone indicated he left Florence and went to Darlington shortly after the time of death estimated by the deputy coroner. Also, in the days leading up to the murder, Appellant contacted the victim over 380 times. He never attempted to contact her again after the time of the murder.

The victim's car is seen arriving and never leaving again. A van, that was operated as a taxicab, was seen arriving that afternoon and then leaving. No other vehicles came or went. Additionally, evidence established Appellant called the taxi around 4:00 PM and went to a location in Darlington he was known to frequent. When he left her house, he had a black backpack which was later located at the address of Appellant's friend just around the street from where Appellant was dropped off by the taxi.

The passenger of the taxicab, who rode with Appellant from Florence to Darlington, met with a sketch artist and created a sketch of the person who got into the taxi. (State's Exhibit 12). The jury had this sketch, along with two other photos of Appellant to consider when looking at Appellant in court to determine if he was the person who got in the taxi. See, e.g., State v. Odom, 412 S.C. 253, 268, 772 S.E.2d 149, 156 (2015) (the jury's ability to view Appellant's appearance in the courtroom is a factor to consider). While admittedly circumstantial, the evidence showing Appellant was with the victim right up until he left in a taxi at 4:00 PM and never contacted her again, juxtaposed with the estimated time of death certainly provides evidence from which a

rational trier of fact could find Appellant was the person who killed Joseph beyond a reasonable doubt.

Appellant points to several cases from the appellate courts where the defendant's convictions were reversed, and the appellate court found a directed verdict should have been granted. None of the cases are factually similar to the instant case and are not binding in any way. As the Supreme Court recognized in addressing a very similar request to apply the same cases: "we need not engage in the futile exercise of attempting to distinguish their holdings from the instant case as we have recognized that 'in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive' and holdings in these cases are 'limited to their peculiar facts.'" State v. Pearson, 415 S.C. 463, 474 n.5, 783 S.E.2d 802, 808 n.5 (2016) (citing Bennett, 415 S.C. at 236 n. 1, 781 S.E.2d at 354 n. 1.).

Accordingly, the trial court did not err in denying Appellant's motion for a directed verdict and this Court should affirm his conviction and sentence for murder.

## II. The trial court properly denied Appellant's motion to suppress the use of Appellant's cell phone call records and cell tower location information received on the basis of the February 19, 2016 search warrant.

Appellant raises multiple grounds that the trial court erred in failing to suppress the admission of cell phone records and cell site location data obtained from Sprint related to Appellant's phone. The information was properly obtained by the State. As Appellant's trial counsel admitted, no warrant was necessary at the time the information was originally sought in 2016. When the State realized it did not receive all that it requested, a new warrant was not required. Finally, suppression and exclusion would serve no deterrence in this case, and as a result, it would not have been appropriate for the trial court to prevent the State from admitting the cell phone information.

### Standard of Review

"On review of a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling and will reverse only when there is clear error." State v. Bruce, 412 S.C. 504, 509, 772 S.E.2d 753, 755 (2015) (citing State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011)); see also, State v. Missouri, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004) (same). "On appeals from a motion to suppress based on Fourth Amendment grounds, this Court reviews questions of law *de novo*." State v. Bash, 419 S.C. 263, 268, 797 S.E.2d 721, 723–24 (2017). "'On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error.'" State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) (quoting State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010)). "The 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently." State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (quoting State v.

Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005)). "[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling." Id.

**Merits**

Appellant initially contends the 2016 search warrant was invalid so the cell phone records and site location data should have been suppressed. At the time the request was made, no case had indicated the information was protected by the Fourth Amendment, and as a result, a warrant was not needed for Appellant's cell phone records and cell site location data. See United States v. Graham, 824 F.3d 421 (4th Cir. 2016) (finding individuals do not have a reasonable expectation of privacy in historical CSLI records and noting that other federal circuits agreed with the conclusion).

Additionally, as conceded by Appellant's counsel, the information was not protected and was, instead, covered by the third-party doctrine, which allowed the information to be obtained without a warrant. Specifically, he noted:

> Previously . . . up to Carpenter, it was the prevailing law, you know, that information that was retained by a third party that an individual had not expectation of privacy in that information and, therefore, the third-party rule applied. That if it wasn't your information, you didn't have an expectation of privacy, no warrant had to be obtained.

(T.90; R.___). The United States Supreme Court was in agreement with Appellant's counsel:

> This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

United States v. Miller, 425 U.S. 435, 443 (1976). The holding was confirmed regarding the use of a phone and the information transmitted to a phone company in Smith v. Maryland, 442 U.S. 735, 744 (1979). As acknowledged by Appellant's counsel, when the State sought to obtain the

records from Sprint, Appellant's expectation of privacy in those records had never been recognized and a warrant was not required in order to obtain them.

Even if the expectation of privacy existed, the State operated in good faith in regard to obtaining the information based on the case law which was available at the time they obtained the records. This Court recently addressed a similar situation in State v. Warner, 430 S.C. 76, 842 S.E.2d 361 (Ct. App. 2020). In Warner, the trial court found the warrant used to obtain phone records was invalid. However, the court denied suppression because of the third-party doctrine. This Court noted Carpenter v. United States, —— U.S. ——, 138 S. Ct. 2206 (2018), was decided after the suppression hearing. In particular, this Court cited Davis v. United States, 564 U.S. 229, 243–44, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) ("[T]he retroactive application of a new rule of substantive Fourth Amendment law raises the question whether a suppression remedy applies; it does not answer that question."), and applied the rule of Davis to determine whether suppression was warranted. Warner, 430 S.C. at 93, 842 S.E.2d at 369. This Court ultimately, and properly, concluded:

> Although the officers exceeded the Fourth Amendment when they obtained Warner's cell phone records without a valid warrant, in light of Miller's validity at the time of the search, their conduct was not a deliberate or reckless transgression. Like the search in Davis, the search of Warner's records was not wrongful at the time it was made, and no deterrent value accrues from suppressing the evidence under these specific circumstances.

Warner, 430 S.C. at 94, 842 S.E.2d at 370. The same result should apply to the 2016 search and subsequent clarification by the officers in this case.

Appellant next contends the information should have been suppressed because law enforcement had to get corrected records from Sprint in 2019. The trial court properly concluded the information should not have been suppressed. The officers should have been able to obtain all

of their desired information from the request to Sprint in 2016. Had they gotten all of the correct information at the time, this Court's conclusion in Warner would be conclusive on the judge's ruling not to suppress. A different result should not occur because Sprint incorrectly sent information which was later corrected.

The United States Supreme Court has stressed that the "prime purpose" of the exclusionary rule "is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." United States v. Calandra, 414 U.S. 338, 347 (1974). Substantial costs to society result from the exclusion of evidence, and the United States Supreme Court has found that the deterrent effect of exclusion must outweigh and justify these costs:

> Real deterrent value is a "necessary condition for exclusion," but it is not "a sufficient" one. The analysis must also account for the "substantial social costs" generated by the rule. Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a "last resort." For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.

Davis v. United States, 564 U.S. 229, 237 (2011); see also, State v. Sachs, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975) (stating "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where [the purpose of] deterrence is clearly subserved"). The South Carolina Supreme Court recently articulated the same holding: "The purpose of the exclusionary rule is to deter law enforcement officers from committing Fourth Amendment violations. As a result, when suppression will fail to yield "appreciable deterrence," exclusion is clearly unwarranted." State v. Moore, 429 S.C. 465, 478, 839 S.E.2d 882, 889 (2020) (citations omitted).

As the United States Supreme Court has reminded: "Suppression of evidence, however, has always been our last resort, not our first impulse." Hudson v. Michigan, 547 U.S. 586, 591 (2006).

In this case, the records were not even obtained based on a subsequent violation. They were obtained as a clarification or correction of the information properly received in 2016. Even if they were improperly obtained, there is no deterrent value in suppressing the evidence because the information was only required to be obtained as a result of an error by Sprint and not through any action of law enforcement. In this case, the "remedial objectives" of the exclusionary rule are not "efficaciously served." See United States v. Calandra, 414 U.S. 338, 348, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974). The "deterrence benefits" of excluding the evidence certainly do not "outweigh its substantial social costs." Hudson, 547 U.S. at 591. As a result, this Court should affirm the trial court's denial of Appellant's motion to suppress.

## III. The trial court properly issued the Schmerber Order entitling the State to collect Appellant's DNA. Additionally, any error in the original DNA warrant was rendered harmless in light of the State obtaining the Schmerber Order which produced the same DNA from Appellant and was used to generate the DNA results tying Appellant to the scene of the crime.

Appellant contends the trial court erred in admitting DNA results because the circuit court improperly refused to suppress based on an invalid search warrant and an inappropriately obtained Schmerber Order. The Schmerber Order was properly obtained and the trial court allowed full discussion by all involved to establish the requisite probable cause. The trial court conducted a full hearing, taking testimony and allowing cross-examination, prior to issuing an order finding the requisite probable cause. As a result, the DNA results were properly admitted regardless of the validity of the initial search warrant.

### Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). As such, "[appellate courts are] bound by the [circuit] court's factual findings unless they are clearly erroneous." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

### Merits

In this case, the sole question is whether the trial court erred in issuing a Schmerber Order for Appellant's DNA after conducting a thorough hearing on the record, allowing cross-examination, and concluding probable cause existed to take a simple buccal swab of Appellant's cheek in an effort to link him to evidence located at the scene of an execution style murder. Pursuant to Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966), the circuit court may issue an order that allows the State to procure evidence from a person's body if the State can establish probable cause for the acquisition of such evidence. Under South Carolina

law, when considering whether a warrant for the acquisition of non-testimonial identification evidence should be issued, the court should consider: (1) whether probable cause exists to believe the suspect has committed the crime; (2) whether there is a clear indication relevant evidence will be found; and (3) whether the method to secure the evidence is safe and reliable. In re Snyder, 308 S.C. 192, 195, 417 S.E.2d 572, 574 (1992). Additionally, the court should take into consideration the seriousness of the crime and the importance of the evidence to the investigation. Id. Finally, "[t]he judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures." Id. In State v. Register, 308 S.C. 534, 538, 419 S.E.2d 771, 773 (1992), the Supreme Court indicated: "The factors we have promulgated must remain flexible in order to properly evaluate and balance the totality of the facts and circumstances presented in each particular case."

Appellant seems to make several arguments for why the Schmerber Order is invalid. One because it does establish the specifics of probable cause found. Probable cause is not a strenuous burden for the State to meet. As the South Carolina Supreme Court has very recently indicated: "[p]robable cause, we have often told litigants, is not a high bar . . . ." State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (citing Kaley v. United States, 571 U.S. 320, 338, 134 S.Ct. 1090, 188 L.Ed.2d 46 (2014) (explaining further that probable cause is defined as a "fair probability" upon which "reasonable and prudent people . . . act"). Additionally, the court determining whether to issue the warrant or Schmerber Order is entitled to substantial deference from the appellate court. See State v. Pressley, 288 S.C. 128, 131, 341 S.E.2d 626, 628 (1986) ("Determination of probable cause . . . is entitled to substantial deference.") (citing Illinois v. Gates, 462 U.S. 213 (1983)).

The Order indicates probable cause was found, and that Order is supported by the evidence presented to the Court. (Schmerber Order; R.___). Additionally, after a full contested hearing, the trial court made a specific finding of probable cause to obtain Appellant's DNA. (June 17 T. 133). At the hearing, the State established Appellant was in the area where the victim's body was located based on cell phone records. (June 17.T.129-131; R.___). Additionally, a SLED forensic artist did a sketch based on information given by a taxicab driver and passenger who picked up a suspect in the area of the murder. The sketch matched the description of Appellant. (June 17T.81; R.___).

Most significantly, Investigator McFadden testified to an extensive investigation leading to Appellant as the primary suspect in the murder. He indicated the victim's phone was retrieved from the scene and had multiple addresses listed in the GPS. At the same time he was going through the phone, another investigator followed up on a video recording showing a taxicab leaving the scene of the crime. It was a taxicab out of Darlington and dropped an individual off on Donals Rail, which is in the vicinity of one of the addresses, 225 Plum Street, listed in Victim's phone. (June 17T.105-106; R.___). The Plum Street address belonged to one of Appellant's co-workers. A DNA sample was obtained from him, and he was excluded from possible contributing to the DNA in the condom. (June 17T.108; R.___).

Importantly, Appellant's grandmother lived at one of the addresses listed in the victim's phone. The investigators showed Appellant's grandmother the sketch by the SLED artist done based on the description given by the taxi passenger and the grandmother identified Appellant. (June 17T.107-108; R.___). Her response to the investigators was "that's my grandson what did he do now." (June 17T. 108; R.___). The third address listed in the victim's phone belonged to Antonio Williams—Appellant's brother. (June 17T.109; R.___).

Further, it is clear the trial court weighed the intrusion—a simple cheek swab—against the significance of comparing the unknown male DNA found in a used condom at the scene of the murder to Appellant's DNA as a possible suspect. (June 17 T.132-133). Snyder and Register were both cited to the trial court, so it is clear he understood the standard under which he was operating even if he did not make a specific finding regarding the balancing of interests.[1]

Appellant also seems to indicate because the State previously obtained his DNA through a warrant that the Schmerber Order was unnecessary and improperly obtained. However, Appellant challenged the validity of that warrant, and continues to challenge the validity of the warrant on appeal. If the warrant was found to be invalid, the search to obtain the DNA would be invalid. The State obtained the Schmerber Order to protect the results from the possible determination at trial or on appeal that the warrant was invalid. Appellant's DNA would not have changed from the time of the original search warrant until it was obtained pursuant to the Schmerber Order. See e.g., United States v. Mitchell, 652 F.3d 387, 413 (3d Cir. 2011) ("It is true, as Mitchell asserts, that the information contained in a DNA sample does not change over time and cannot be concealed . . . ."); U.S. v. Gross, 554 F.Supp.2d 773, 776–77 (N.D.Ohio 2008), aff'd in part, rev'd in part on other grounds, 662 F.3d 393 (6th Cir.2011) ("As DNA does not change over time, the Government inevitably would have matched Defendant's DNA to the DNA on the firearm, even without a warrant for the buccal swab."). Therefore, the information obtained was the same information and would provide the same results. In addition, as noted above, the intrusion of a

[1] Additionally, it should be noted no case specifically requires the balancing to be set forth in the Order. Instead, Register requires the balancing and, in that case, it was unclear the court had conducted the proper balancing in a case in which the evidence was not related to a suspect or victim.

buccal swab of Appellant's cheek is not significant compared to the significance of identifying the person who left DNA inside a used condom found at the scene of a murder.

Because the DNA evidence was properly obtained through the Schmerber Order, any potential issue with the conclusory nature of the search warrant or any potential issue pursuant to Franks v. Delaware, 438 U.S. 184 (1978) are harmless. The DNA results were properly obtained through a valid means, and properly admitted by the trial court.

## IV. The trial court did not err in granting a continuance to the State when it was unlikely the trial would be completed within a week and the following week numerous State witnesses would be unavailable.

Appellant contends the trial court erred in granting the State's motion for a continuance. The trial court did not abuse its wide discretion in granting the State's motion in light of the likelihood of the trial continuing into a second week and unavailability of several witnesses. Additionally, the claim is better considered as part of Appellant's motion for a speedy trial, which is addressed in the next issue.

As the South Carolina Supreme Court stated many years ago: "The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant." State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957). Additionally, the Court indicated reversals "are about as rare as the proverbial hens' teeth. Id.

In the instant case, on Monday June 17, 2019 the State asked for a continuance in part due to the need to "clean up" issues "evidentiary wise" as well as the likelihood the trial would continue beyond when witnesses and the Solicitor were available. The Solicitor noted "critical witnesses" would not be able to be present if the trial continued into the following week and the Solicitor would not be available due to his son's graduation from nuclear school with the Navy. The circuit court found there was no prejudice resulting from the grant and did not abuse his discretion in granting the State's motion. As a result, there was a basis for the continuance and the trial court did not err in its grant of the continuance to the State.[2]

[2] The pre-trial motions continued into the next day and given the fact the ultimate trial lasted 6 days—including another full day of pretrial hearings—the trial court correctly determined the continuance was warranted based on the likelihood of losing necessary witnesses.

## V. The trial court did not err in denying Appellant's motion for a speedy trial filed only after the State obtained a continuance and when he had not suffered prejudice to warrant the result of a dismissal of his case.

Appellant contends the trial court erred in denying his motion for a speedy trial made for the first time after the State sought and obtained a continuance at the June hearing. The trial court properly considered the factors annunciated in Barker v. Wingo, 407 U.S. 514 (1972), and did not abuse his discretion in denying the motion.

The Sixth Amendment guarantees: "In all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial." U.S. Const. amend VI. The United States Supreme Court (USSC) explained: "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." Beavers v. Haubert, 198 U.S. 77, 87 (1905); see also, Barker v. Wingo, 407 U.S. 514, 522 (1972) (finding "any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case"). As the USSC stated:

> In Barker, the Court refused to "quantif[y]" the right "into a specified number of days or months" or to hinge the right on a defendant's explicit request for a speedy trial. Id., at 522–525, 92 S.Ct. 2182. Rejecting such "inflexible approaches," Barker established a "balancing test, in which the conduct of both the prosecution and the defendant are weighed." Id., at 529, 530, 92 S.Ct. 2182.

Vermont v. Brillon, 129 S.Ct. 1283, 1290 (2009).

A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion. State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." Id. (quoting Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)).

In Barker, the USSC identified several factors to be used in determining whether a defendant has been denied the right to a speedy trial including: (1) the length of delay, (2) the reason the government uses to explain the delay, (3) when and how the defendant asserted his speedy trial right, and (4) the prejudice to the defendant. Barker, 407 U.S. at 530; see also, State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978) (applying Barker factors in South Carolina). "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." Barker, 407 U.S. at 530.

Even assuming the delay between Appellant's arrest and trial is sufficient to warrant consideration of the remaining factors, the trial court properly denied the motion to dismiss. See Doggett v. U.S., 505 U.S. 647, 652 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); see also, Waites, 270 S.C. at 108, 240 S.E.2d at 653 (holding a two-year-and-four-month delay in a prosecution for assault and battery of a high and aggravated nature and for pointing and presenting a firearm implicated the rest of the Barker analysis).

The second factor is the reason for the delay. In Brillon, the USSC explained:

> Barker instructs that "different weights should be assigned to different reasons," id., at 531, 92 S.Ct. 2182, and in applying Barker, we have asked "whether the government or the criminal defendant is more to blame for th[e] delay." Doggett v. United States, 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Deliberate delay "to hamper the defense" weighs heavily against the prosecution. Barker, 407 U.S., at 531, 92 S.Ct. 2182. "[M]ore neutral reason[s] such as negligence or overcrowded courts" weigh less heavily "but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Ibid.

Brillon, 129 S.Ct. at 1290. Further, the Court has instructed delays caused by the defendant should be weighed against him. See Barker, 407 U.S. at 529. "A valid reason presented by the State may justify an appropriate delay." State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007). "The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay." State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986).

In the instant case, some of the roughly three-and-a-half-year delay can be attributed to each party. Appellant's trial counsel, Thurmond Brooker, was hired approximately three years after Appellant's arrest. Prior to Mr. Brooker being retained, the State continued its investigation. Further, at the hearing, the Solicitor noted talking with Appellant's prior counsel several times "and got every indication he was not ready to go to trial." (June 17T.148). Additionally, the Solicitor noted the prior counsel had difficulties meeting with Appellant because he was serving a sentence in McCormick for involuntary manslaughter and arson of a church. Once he was released from that sentence, access became easier. (June 17T. 150; R.___). As a result, the majority of the time for delay should not be weighed against the State, especially in light of Appellant's failure to provide any explanation for why his prior counsel was unable to go forward. Additionally, as Appellant even noted at the hearing, three to four months of the delay was necessitated by the hiring of Mr. Brooker and the need for him to get prepared on the case. This delay certainly cannot weigh against the State. As a result, the only real delay which could weigh against the State is the three-month delay caused by the State's need for a continuance resulting from several witnesses being unavailable if the trial lasted longer than a week and the need to clean up a possible evidentiary issue. The factor certainly does not weigh heavily against the State or in favor of a violation of Appellant's speedy trial rights. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was

due to the neglect and willfulness of the State's prosecution); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing "**delay alone is not dispositive**" (emphasis added)).

The third factor for consideration is Petitioner's assertion of the right. Langford, 400 S.C. at 444, 735 S.E.2d at 483. As the Court instructed in Barker:

> Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. . . . **We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.**

Barker, 407 U.S. at 531-532 (emphasis added).

In the case *sub judice*, Appellant never asserted a speedy trial right until he did so on the record after the State obtained its continuance. At no time prior to Mr. Brooker being hired, or even prior to the June hearings, did he assert a speedy trial right. As the circuit court noted: "at not time in three years and three months has there ever been any request by the defense to move this case to trial until today." (June 17T.145; R.___). The court also noted that had it been previously asserted there were "remedies" and actions which could be take to "get the trial heard." (June 17T.145; R.____). As a result, this factor weighs against Appellant and not in favor of a violation of a speedy trial right. See State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (acknowledging that "the manner in which the defendant asserts his right [to a speedy trial] is an important factor to be considered" when analyzing whether a defendant speedy trial motion should be granted); Barker, 407 U.S. at 532 ("emphasiz[ing] that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial."); see also, Rashad v. Walsh, 300 F.3d 27, 40 (1st Cir. 2002) ("…the record is clear that the petitioner failed to seek a speedy

trial with anything remotely approaching diligence. This counts significantly in the speedy trial calculus."); United States v. Tranakos, 911 F.2d 1422, 1429 (10th Cir. 1990) ("We are unimpressed by a defendant who moves for dismissal on speedy trial grounds when his other conduct indicates a contrary desire").

In considering the fourth prong of the test, whether Appellant suffered prejudice, the South Carolina Supreme Court found Barker instructive. Langford, 400 S.C. at 445, 735 S.E.2d at 484. The USSC stated:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (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. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.

Barker, 407 U.S. at 532.

In this case, there is no allegation the third and "most serious" prejudice was implicated by any delay in this case. Appellant has never articulated any reason why his defense was impacted by the delay, especially the minimal delay attributed to the State. His sole articulation of prejudice has related to being incarcerated while awaiting trial on charges of murder. While certainly some level of prejudice exists from being incarcerated facing a charge of murder, it alone should not be sufficient to constitute a violation of Appellant's speedy trial rights. See Langford, 400 S.C. at 445, 735 S.E.2d at 484 ("While we are cognizant of not minimizing the deleterious effects of lengthy pre-trial incarceration, the two-year delay in bringing this case to trial does not amount to a constitutional violation in the absence of any actual prejudice to Langford's case."); State v.

Kennedy, 339 S.C. 243, 251, 528 S.E.2d 700, 704–05 (Ct. App. 2000) ("Given the complexity of the case, supplying the State with a legitimate reason for the delay, and the lack of prejudice to the defendant, we conclude the trial court properly denied Kennedy's motion to dismiss based on his assertion of a speedy trial violation.").

In looking at the factors and the case as a whole, taking into account both the interest of Appellant and the State, Appellant has failed to demonstrate he was entitled to a dismissal based on a violation of his right to a speedy trial.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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April 6, 2022

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Florence County
Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case Tracking No. 2020-000049

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The State, Respondent,

vs.

Royal Daniel Williams, III, Appellant.

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**PROOF OF SERVICE**

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I, William M. Blitch, Jr., certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by emailing a copy to his counsel of record, Elizabeth Franklin-Best, at her primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 6th day of April, 2022.

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## William Blitch

**From:** William Blitch
**Sent:** Wednesday, April 6, 2022 9:41 PM
**To:** elizabeth@franklinbestlaw.com; Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)
**Cc:** Caroline Collins
**Subject:** Emailing: WILLIAMS Royal Initial Brief of Respondent 2020-000049 (02945222xD2C78).PDF
**Attachments:** WILLIAMS Royal Initial Brief of Respondent 2020-000049 (02945222xD2C78).pdf

Good evening Ms. Franklin-Best,

Attached please find the Initial Brief of Respondent and Designation of Matter in The State v. Royal Daniel Williams, III (2020-000049). This will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Kind Regards,

William



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