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May 16 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON DONN LEE,

APPELLANT.

APPELLATE CASE NO. 2019-001977

BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by refusing to suppress Lee's electronic records which the police obtained from multiple providers with a search warrant that was invalid for lack of jurisdiction?

STATEMENT OF THE CASE

A Lexington County grand jury indicted appellant Jason Donn Lee for murder and first-degree burglary and on November 18, 2019, he was tried before the Honorable Thomas W. Cooper and a jury. R. 1. S.R. "Rick" Hubbard, III, and D. Shawn Graham represented the State. R. 1. James R. Snell, Jr. and Vicki D. Koutsogiannis represented appellant. R. 1. The jury convicted appellant. R. 953, l. 13 – 954, l. 6. Judge Cooper sentenced appellant to concurrent life sentences. R. 968, l. 13 – 18. This appeal follows.

STANDARD OF REVIEW

The issue on appeal is a question of law for the court, which is reviewed de novo. Univ. of S. California v. Moran, 365 S.C. 270, 275, 617 S.E.2d 135, 137 (Ct. App. 2005); see also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

ARGUMENT

The trial court erred by refusing to suppress Lee's electronic records which the police obtained from multiple providers with a search warrant that was invalid for lack of jurisdiction.

The evidence that appellant Jason Donn Lee killed his wife, Lindsey Lee ("Lee"), was entirely circumstantial. The motive suggested by the State—money—made little sense in the context of this crime. Finally, the State's best piece of evidence was entirely inconsistent with the crime scene and how this crime was committed.

Appellant and Lee were a month away from their divorce being final when Lee was found murdered in her home on March 14, 2017, in Lexington County. R. 327, l. 6 – 15. They married in September 2010 and separated in April 2016. R. 327, l. 6 – 15. Their divorce was reasonably amicable to the point where they were able to go see their accountant at the same time to have their taxes done. R. 616, l. 5 – 624, l. 23. The accountant remembered the meeting, which occurred on February 11, 2017, and was the last time appellant saw Lee. R. 616, l. 5 – 624, l. 23. The accountant described appellant as unhappy to be there and that Lee was getting their full tax refund, but nothing about the encounter suggested it was unusual for a couple near the end of a divorce. R. 616, l. 5 – 624, l. 23.

The State's theory of motive was that appellant owed Lee money when the divorce was final and was having financial problems. R. 982, l. 22 – 893, l. 24. The amount of money was approximately $7,800. R. 315, l. 8 – 20. However, appellant had a good job as a locksmith with the ability earn even more money by taking additional overtime shifts. R. 306, l. 22 – 307, l. 12. The locksmith company where appellant worked furnished him with a cell phone and a van. R. 285, l. 20 – 23. R. 289, l. 3 – 7. Appellant moved from Lexington County, where Lee lived, to

Greenville, to be near his son from a prior marriage. R. 183, l. 12 – 22. Appellant had a good relationship with his ex-wife and with his son. R. 384, l. 12 – 385, l. 23.

Lee worked in the IT department for the Lexington County Sheriff's Office. R. 157, l. 16 – 158, l. 22. When Lee did not show up for work or respond to calls and texts on the morning of March 14, a co-worker asked a deputy to go to her house to check on her. R. 170, l. 1 – 171, l. 6. The deputy found the back door breached and called for backup. R. 187, l. 17 – 188, l. 25. When the other deputy arrived, they entered the house and found Lee dead in the bathtub with her throat slashed. R. 189, l. 1 – 191, l. 6.

The killer attempted to sanitize the crime scene. Lee's body was left in the bathtub with the water running to clean her body of trace evidence. R. 190, l. 11 – 22. Her top had been removed and put into the washing machine. R. 214, l. 14 – 17. The DVR for security cameras was removed. R. 234, l. 19 – 235, l. 7. Her fingernails had been cut below the quick. R. 687, l. 8 – 24. The police did not find any usable fingerprints that were relevant.

Despite the killer having taken all of these precautions, three pieces of blue latex glove were found on the floor. R. 213, l. 8 – 23. The crime scene officer candidly agreed that the pieces of latex "were conspicuous and plainly apparent." R. 240, l. 3 – 241, l. 7. The State's best piece of evidence against appellant was the testimony of the SLED expert who said appellant's DNA was on the conspicuously placed pieces of latex glove. R. 513, l. 15 – 515, l. 4. Importantly, though, the DNA found on the three pieces of gloves was a mixture of two individuals on two of the pieces and three individuals on the other piece. R. 513, l. 15 – 515, l. 4. Appellant was an avid hunter of wild boar and frequently hunted with Lee's brother-in-law. R. 628, l. 8 – 23. Wild boar carry diseases and Lee's brother-in-law testified he and appellant frequently shared blue latex gloves when hunting. R. 630, l. 6 – 631, l. 14.

The police informed appellant about Lee's death at his workplace and appellant immediately began crying. R. 324, l. 1 – 325, l. 20. Appellant cooperated with the police and answered all of their questions on that day, volunteering more information than they asked. R. 325, l. 10 – 342, l. 5. He was willing to allow the officers to download all information from his cell phone. R. 342, l. 4 – 5. Appellant worked the day Lee was killed, went home and took pain medication for his feet, then went to sleep. R. 328, l. 15 – 25. The SLED agent noticed appellant limping. R. 329, l. 1 – 5. The police tracked appellant's cell phones and the GPS in his work van and could not show that appellant left Greenville County the night of the murder. R. 776, l. 23 – 777, l. 4.

Lee and appellant divorced partially because of her relationship with a personal trainer. R. 331, l. 21 – 337, l. 13. By the time of the trial, the trainer had moved back to Scotland. R. 725, l. 18 – 19. The trainer admitted sleeping with Lee, but claimed, despite a prior statement to the contrary, that they only slept together after she had split from appellant. R. 730, l. 20 – 732, l. 23. The trainer's DNA was found on Lee's shoes and Fitbit. R. 542, l. 15 – 547, l. 19. Lee was selling her house and a realtor showed the property the morning of the murder. R. 275, l. 10 – 17. Text messages found on Lee's phone indicated she was communicating with strangers about selling items on the internet. R. 216, l. 20 – 219, l. 11.

During the trial, the court heard appellant's motion to suppress electronic information obtained by the State from Facebook, USAA Bank, Google, Verizon, Hulu, and Fitbit. R. 392, l. 12 – 417, l. 21. The State obtained search warrants for these out-of-state entities from judges in Greenville County. R. 392, l. 12 – 417, l. 21. R. 978. Appellant argued that any information gleaned from these entities should be suppressed because the judges did not have jurisdiction to issue warrants to companies in California, Texas, and New Jersey. R. 392, l. 12 – 417, l. 21.

The trial judge denied the motion to suppress and the State introduced evidence regarding appellant's phone records and Fitbit through their lead investigator and appellant renewed his objection. R. 814, l. 2 – 9. R. 829, l. 18 – 831, l. 13.

The trial judge erred in denying appellant's motion to suppress. South Carolina's statute governing search warrants requires that the issuing judge have "jurisdiction over the area where the property sought is located." S.C. Code Ann. § 17-13-140. Judges in Greenville County do not have jurisdiction outside the state of South Carolina.

The State admitted that the "statute predates what we're talking about today," meaning cell phones and the internet. R. 397, l. 15 – 23. The solicitor said it was "only a matter of time before the courts interpret it to cover it or state statute is changed to deal with it." R. 397, l. 15 – 23. Admitting that the statute needed to be changed is tantamount to admitting that the plain language of section 17-13-140 prohibits judges without jurisdiction over the area of the property's location from issuing a search warrant.

The Legislature's intent and the interpretation of a statute should be determined by the words' plain and ordinary meaning. State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002). The South Carolina Constitution's specific right of privacy favors a narrow interpretation of the power of the police to obtain highly personal data through search warrants from judges lacking jurisdiction. See S.C. Const. art. I, § 10; State v. Counts, 413 S.C. 153, 167, 776 S.E.2d 59, 67 (2015). The Fourth Amendment also recognizes and protects the privacy interest of citizens with respect to location data and cell phones. Carpenter v. United States, 138 S.Ct. 2206, 2217 (2018); Riley v. California, 573 U.S. 373 (2014).

The State argued that the federal Stored Communications Act saved the defective search warrants. R. 392, l. 12 – 417, l. 21. The Stored Communications Act, on its face, does allow for

government entities to use search warrants to obtain electronic information. 18 U.S.C. § 2703. However, section 2703 requires that the police utilize "State warrant procedures." Id. The procedures in South Carolina require that the issuing judge have jurisdiction and, as the solicitor recognized, the statute has not been amended to cover this circumstance. Therefore, any argument concerning the applicability of the federal statute fails.

The Supreme Court's recent decision in State v. Warner, ___ S.C. ___, ___ S.E.2d ___, Op. No. 28094 (April 13, 2022), dealt with this issue. As of the writing of this brief, a petition for rehearing is pending in Warner. The petition for rehearing was filed on April 28, 2022, and the State's return was filed May 9, 2022.

Warner was wrongly decided. The Court's reading of section 17-13-140 has the perverse effect of giving magistrate judges greater jurisdiction than circuit judges. The Court interpreted the portion of section 17-13-140 stating "having jurisdiction over the area where the property sought is located" applies only to "any judge of any court of record of the State." See Warner, Op. No. 28094, at n.5. Applying this jurisdictional limitation to circuit court judges but not magistrate judges makes no sense and cannot be what the Legislature intended. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007).

"Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). It is unfathomable that the General Assembly intended magistrates and city judges, who are not even required to be licensed to practice law in this State, to have greater authority in issuing search

warrants than circuit court judges. When the Supreme Court grants rehearing in Warner and corrects this portion of the opinion, the legal error in Lee's case will be plain.

The admission of this evidence was prejudicial in this completely circumstantial case. The lead investigator testified that she studied the Fitbit data and determined that appellant's Fitbit "registered every minute 24/7." R. 828, l. 25 – 829, l. 12. She testified that appellant's Fitbit generated data showing steps during the middle of most nights. R. 830, l. 19 – 833, l. 12. On the night of the murder, appellant's Fitbit did not register any steps from 6:10 PM until 6:03 AM. R. 832, l. 18 – 20. The investigator claimed to have surveillance footage showing appellant walking through parking lots near his apartment prior to 6:03 AM. R. 832, l. 21 – 833, l. 12. The implication given to the jury was that appellant removed his Fitbit in an attempt to conceal his movements the night of the murder. Without this prejudicial inference, the State likely could not have secured a conviction on the remaining circumstantial evidence and flimsy motive. This Court should reverse.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

s/David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 16th day of May, 2022.