

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

State of South Carolina,)

vs.)

Rosmore Wayne Vilardi,)

Defendant.)

**IN THE COURT OF GENERAL SESSIONS
FOR THE TENTH JUDICIAL CIRCUIT**

**WARRANT NOS.: 2023A0410101937-940
INDICTMENT NOS: 2024-GS-04-0221AG,
-0222AG, -0223AG and -0224AG**

**MOTION TO SUPPRESS
CELL PHONE RECORDS**

NOW COMES THE DEFENDANT, Rosmore Wayne Vilardi, through his attorney, Shaun C. Kent, and would respectfully submit the following Motion and Memorandum in Support of Motion to Suppress Cell Phone Records. It is Defendant's position that Law Enforcement secured search warrants in this case that lacked probable cause on its face in violation of the Defendant's privacy interests guaranteed by the 4th Amendment of the US Const, Article 1 Section 10 of S.C. Const., and South Carolina Code § 17-13-140 and applicable case law by both the United States and the S.C. Supreme Court.

STATEMENT OF FACTS

On November 2, 2015, Terry Michael Scott, Cathy Delores Scott, Barbara Jean Scott and Violet Juanita Taylor were found dead in their double-wide trailer at 2217 Refuge Road in Pendleton, SC. Amy Vilardi, found the bodies, called 911 and deputies from the Anderson County Sheriff's Department responded. The 2217 Refuge Road address has two mobile homes on the property, a double-wide in the front and a single-wide in the back. Cathy and Michael Scott, who owned the property, lived in the double-wide in the front of the property with their mother's Barbara Jean Scott and Violet Juanita Taylor, while Amy and Rosmore Vilardi and their children lived in the single-wide. Cathy Delores Scott is Amy Vilardi's mother and Violet Juanita Taylor

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C. Beema Thomason
CLERK OF COURT

is Amy Vilardi's grandmother. Terry Michael Scott is the husband of Cathy Delores Scott and the son of Barbara Jean Scott.

Rosmore Vilardi cooperated with law enforcement's investigation into the murders of his wife's family. His cooperation included sitting for a polygraph examination on November 3, 2015, which he "passed with flying colors" according to the Anderson County Sheriff's Department. Amy Vilardi appeared for a polygraph on November 10, 2015. Mr. Vilardi accompanied his wife to the location of the examination. While at the location, law enforcement seized Mr. Vilardi's cell phone, a Black Samsung Cellular Telephone Model SMG928V. After taking the cell phone, law enforcement went to an Anderson County Magistrate Judge to obtain a search warrant. The affidavit of Detective Erik Russell in the proposed search warrant describing the probable cause for searching the phone states:

On 11/02/15, Anderson County Sheriff's Deputies responded to 2217 Refuge Road Pendleton, SC regarding a shooting investigation. During this investigation on 11/10/15 investigators seized a cellular phone belonging to Ross Vilardi as part of the investigation. It is the affiant's belief that a search of the device will yield evidence pertinent to the investigation.

Despite this affidavit clearly failing to provide any probable cause, a search warrant was granted, and an extraction was performed on the Black Samsung Cellular Telephone. The warrantless seizure of the cell phone and the conclusory nature of the search warrant affidavit present two distinct Fourth Amendment challenges. The affidavits bare assertion that searching the device "will yield evidence pertinent to the investigation" without explaining the connection between the phone and the shooting fails to establish probable cause, and the eight-day gap between the shooting and seizure raises questions about whether exigent circumstances justified the warrantless taking of the phone.

LEGAL ANALYSIS

1. Law Enforcement had no basis to seize the cell phone.

The warrantless seizure of Mr. Vilardi's cell phone on November 10, 2015, lacks justification under the Fourth Amendment of the United States Constitution and Article One Section 10 of the South Carolina Constitution, which explicitly protects a right to privacy." The Fourth Amendment was created to protect an individual's right against unreasonable searches and seizures. Our case law has firmly established that "[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing...reasonableness generally requires the obtaining of a judicial warrant." *Riley v. California*, 134 S.Ct. 2473, 189 L.Ed 2d 430, 573 U.S. 373 (2014) (internal citations omitted).

Even though Mr. Vilardi believes that law enforcement had no basis to seize his cell phone, for purposes of argument, he concedes that law enforcement may seize an item without a warrant if they have probable cause to believe it contains evidence of a crime and the "exigencies of the circumstances demand it." *United States v. Grinder*, 808 Fed.Appx. 145, (2020). Here, it is clear that no exigent circumstances existed to justify the warrantless seizure. Exigent circumstances require evidence of an imminent threat or risk of evidence destruction. *State v. Moore*, 429 S.C. 465, (2020). The affidavit provides no indication that Mr. Vilardi posed an imminent threat or that evidence was at risk of destruction eight days after the homicide. In fact, Mr. Vilardi's cooperation with law enforcement is unmatched compared to typical criminal investigations. Mr. Vilardi's conduct as a whole suggests voluntary cooperation rather than circumstances requiring immediate action that the officer took.

The warrantless seizure of Mr. Vilardi's cell phone was unreasonable and without any applicable exception to the warrant requirement of the Fourth Amendment of the United States

Constitution and Article One Section Ten of the South Carolina Constitution. Without any justification, any subsequent search based on this unlawful seizure should be suppressed.

2. The Affidavit in the Search Warrant lacked sufficient Probable Cause

If the Court does not suppress the evidence because of the unlawful seizure. Detective Russell's affidavit fundamentally fails on several levels to provide probable cause necessary to secure a search warrant. In addition, the request must comply with South Carolina's search warrant statute, S.C.Code Ann. §17-13-140. It must be supported by an affidavit containing the facts giving rise to probable cause. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216, (2006), *State v. Woods*, 376 S.C. 125, 654 S.E.2d 867, (Ct. App. 2008).

The magistrate must determine whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in the particular place to be searched. *State v. Gentile*, 373 S.C. 506 (2007), *State v. Dill*, 423 S.C. 534, 816 S.E.2d 557, (2018). "Probable Cause does not mean absolute certainty." *State v. Williams*, 262 S.C. 186, 203 S.E.2d 436, (1974). But the affidavit must contain sufficient underlying facts and information to allow the magistrate to make an independent evaluation of probable cause. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216, (2006) The determination of probable cause is limited to the information within the four corners of the affidavit unless supplemental oral testimony is provided. *State v. Thompson*, 419 S.C. 250, 797 S.E.2d 716, (2017). Most importantly, "mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990). Finally, the affidavit does not contain even a conclusory assertion that the information or its source is reliable. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, (1983).

The affidavit states there was a shooting on November 2, 2015, which is not the whole truth as the cause of from the autopsy is from stab wounds, on a different date. That sentence is followed by two more that say law enforcement seized Mr. Vilardi's cellular phone on November 10, 2015, and Detective Russell believes a search of the cellular phone will yield evidence pertinent to the investigation but failed to mention why he believes that it will provide evidence. This bare bones affidavit is clearly insufficient to support probable cause necessary for a warrant. Detective Russell did not provide any nexus between the evidence sought and the item to be searched. Frankly, Detective Russell provided nothing but a three-sentence summary that a homicide happened, Mr. Vilardi's phone was seized, and Detective Russell thinks there is evidence connecting him to this homicide. That is not enough information.

This affidavit fails to establish a substantial basis for finding probable cause. *State v. Moore*, 421 S.C. 167, (2017) The affidavit is impermissibly conclusory and does not explain why law enforcement believes that a search of the device will yield evidence pertinent to the investigation. With the property in question being a cell phone, the Court requires a higher level of scrutiny in the warrant due to the breadth and sensitivity of information that can be stored on the devices.

In 2022, the South Carolina Supreme Court held that an Anderson County detective's affidavit seeking cell-site location information records "did not set forth probable cause for issuance of warrant" because the "affidavit provided magistrate no facts or circumstances whatsoever, but only conclusory statement that some unnamed person considered defendant a suspect based on unprovided information." *State v. Warner*, 436 S.C. 395 (2022). Although *Warner* involved a confidential informant, the cases are similar to the facts of this case as a

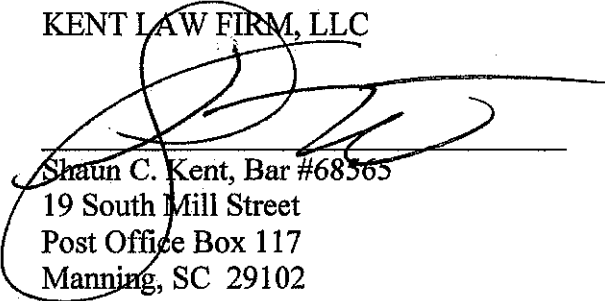
substantial majority of the 53 search warrants issued in this case do not have probable cause listed on the face of the search warrant.

Warrants must have probable cause. South Carolina courts have consistently held that "mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient" to support a search warrant. *State v. Philpot*, 317 S.C. 458 (1995). The affidavit "must contain sufficient underlying facts and information upon which the magistrate may make determination of probable cause" *State v. Philpot*, 317 S.C. 458 (1995). When an affidavit "fails altogether to state the time of the occurrence of the facts alleged," it is insufficient *State v. Thompson*, 363 S.C. 192 (2005). It is without question that the search warrant for the data from the Black Samsung Cellular Telephone lacks probable cause. A hearing may be necessary to determine whether the search warrants were supplemented with any oral testimony or additional evidence. If so, what was that evidence and does it reach the requirement of probable cause.

CONCLUSION

The warrantless seizure of Mr. Vilardi's cell phone was without justification. Any subsequent evidence recovered as a result of this warrantless seizure should be suppressed. Further, the affidavit used in the search warrant fails to establish probable cause required by the United States Constitution, South Carolina Constitution and S.C. § 17-13-140. As such, the evidence extracted from the unlawful search and seizure of Mr. Vilardi's Black Samsung Cellular Telephone should be suppressed.

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