

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**

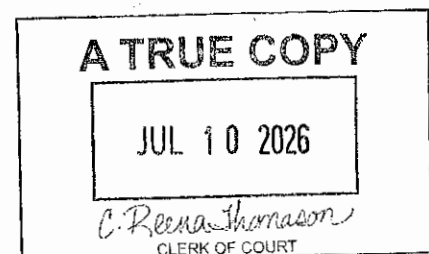
**MOTION TO SUPPRESS TESTIMONY
FROM ERIC DEVLIN**

The Defendant, by and through his undersigned counsel, respectfully moves to suppress all evidence seized by the State pursuant to the search warrants issued from various periods of 2015 and executed by Eric Devlin in October through November 2023.

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 and initiated their investigation. 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 mothers, 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 is Amy Vilardi's grandmother. Terry Michael Scott is the husband of Cathy Delores Scott and the son of Barbara Jean Scott.

It is apparent the Vilardis were considered suspects by the Anderson County Sheriff's Office in early November 2015 even though it was not announced to the public until March 2023. The Vilardi's cooperated in every sense of the word with the investigation by giving dozens of statements, complying with all evidentiary requests, providing information and sitting for polygraph examinations.



On March 14, 2023, Anderson County Sheriff Chad McBride named Amy and Rosmore Vilardi as persons of interest for the first time to the general public. The Anderson County Sheriff's Department solicited help in the form of a television show named *Cold Justice*. In the fall of 2023, the Anderson County Sheriff's Office entered into a contract with Cold Justice. Producers, actors, and former prosecutors from the show descended into Anderson County for a week in December 2023. While in Anderson County, they re-interviewed witnesses with leading questions and analyzed evidence already in possession of the State. A portion of this investigation was performed by Eric Devlin.

Eric Devlin is a Texas-based digital forensic examiner and attorney who serves as an on-air consultant for the television show *Cold Justice* on TNT/Oxygen, whose involvement appears to have led directly to the December 2023 arrests of the Defendant. Devlin prepared a 303-slide presentation purporting to cover the "Electronic Evidence" in this case, bearing the case number LFG20231020-1, indicating his engagement began in October 2023. In his work, the Anderson County Sheriff's Office sent Devlin nearly 40 different devices ranging from Facebook records, cell phones, zip drives, Gmail returns, and laptops for Devlin to meticulously extract. While in Texas, Devlin worked on this case for a couple of weeks before flying to Anderson to make a presentation to the Anderson County Sheriff's Office with his PowerPoint. Shortly after, these warrants followed in December 2023.

On the stand in February, Devlin stated that the first thing he does is look at the authority for him to be able to perform an extraction because of the significant invasion of privacy these extractions involve. The United States Supreme Court agrees stating that modern cell phones are "such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." *Riley v. California*, 573 U. S. 373, 385 (2014). The authority for each of these searches derives from search warrants obtained in 2015 following the procedure found in S.C. Code §17-13-140.

ARGUMENT

The process for obtaining, executing and documenting property through search warrant in

South Carolina is governed by S.C. Code § 17-13-140. Regardless of whether probable cause existed at the time the warrant was issued, the statute commands that “any warrant issued hereunder shall be executed and return made only within ten days after it is dated.” S.C. Code § 17-13-140. In fact, the actual search warrant that was signed for each of the devices extracted by Eric Devlin states, “The Search Warrant shall not be valid for more than 10 days from the date of issuance.” Prior to the legislature introducing S.C. Code § 17-13-140, the South Carolina Supreme Court found that a 42-day delay made the search warrant stale and ineffective as a matter of law. *State v. Baker*, 251 S.C. 108, 160 S.E.2d 556, (1968). After *Baker*, it is clear that the legislative intent is for 10 days to be a reasonable amount of time to execute a warrant.

DESCRIPTION OF PROPERTY

SEE /

This Search Warrant shall not be valid for more than ten days from the date of issuance.

These search warrants for the devices extracted by Devlin were issued at the end of 2015. Devlin performed his extractions in December 2023. The lapse in time between the issuance of the search warrant by an Anderson County Magistrate and the execution of the search warrant in Texas by a TV show employee without any reasonable explanation rendered the search warrant stale and ineffective. Thus, all evidence gleaned from the stale search warrant should be suppressed. Devlin’s extraction is a violation of the Fourth Amendment, S.C. Code §17-13-140, Article 1 Section 10 of the South Carolina Constitution and should be suppressed.

Extracting all data from devices like cell phones, computers, hard drives and flash drives is one of the most significant invasions of privacy that occur in criminal investigations. Eric Devlin testified that “forensic analysis of these devices are incredibly invasive.” Because of the intrusive nature of these extractions, it is imperative that a Court has given proper authority for law enforcement to conduct the searches. That did not happen in this case.

Because the statute is clear, and unambiguous, there are very few cases on point that

provide a timeline for law enforcement to execute the warrant. The main cases dealing with the timeliness requirements in the search warrant statute are *State v. Weaver*, 374 S.C 313, 69 S.E.2d 479, (2007) and *State v. Wise*, 272 S.C. 384, 252 S.E.2d 294 (1979). In *Weaver*, the Court stated that providing the return from the search warrant of what was found after the 10-day requirement was ministerial in nature. In cases when the return for the warrant is not submitted within 10 days, the Defendant must show that he was prejudiced by the delay for the evidence to be suppressed. *Weaver* relies on *Wise* in their ruling, which also analyzes the 10-day requirement from a return, not execution, of a search warrant.

Although one sentence from the *Weaver* case combines “execution and return,” the ruling is based on *State v. Wise*, which exclusively analyzes the timeliness of the return. But the facts in both *Weaver* and *Wise* have to do with the date of the return, not the date of execution. The date of execution is consequential, not ministerial, in nature. Probable cause has a timeliness aspect to it. Therefore, the probable cause has automatically become stale after the 10 days and no longer exists as it did at the time of the warrant request. Because these search warrants were executed eight years after the 10 days lapsed, there is not a good faith exception to law enforcement’s decision to meticulously search these devices.

Prior to S.C. Code § 17-13-140 being enacted, South Carolina Courts dealt with a lapse in time between a search warrant being issued and executed in a reasonable time in the *State v. Baker*, 251 S.C. 108, 160 S.E.2d 556, (1968). In *Baker*, there was a gap of 42 days between a search warrant being issued and executed. The Court held that the “search warrant had, by reason of the 42 days unexplained delay, become stale and ineffective as a matter of law.” *Baker* at 111, at 889. Unlike the facts present in our case, the Supreme Court knew that they were excluding illegal evidence, but Justice Littlejohn defended his position stating “we are confronted with the duty to apply the law as declared and to establish a precedent for all other similar cases arising hereafter. Should we hold that this evidence was admissible it would signal to all police authority that search warrants may be held as long as 42 days without excuse. Such is inconsistent with the constitutional guaranty and is consistent with the general case law.” *Id.*

STATUTORY AUTHORIZATION FOR ACTION OUTSIDE JURISDICTION

Even if the warrants have no requirement on when to execute them and are ruled valid, Eric Devlin — a former cop hired by a television production company — is not the type of officer to whom a warrant under S.C. Code Ann. § 17-13-140 may be directed. The statute expressly limits execution authority to peace officers having jurisdiction in the county where the warrant was issued, including members of the South Carolina Law Enforcement Division. Additionally, S.C. Code Ann. § 17-13-90 provides that only law enforcement officers under bond shall be permitted to execute a search warrant. Eric Devlin, acting as a contractor for a private television show, is not a peace officer under bond with jurisdiction in the relevant county. A private individual, even a former law enforcement officer, acting on behalf of a television production company does not satisfy the statutory requirements necessary to perform valid search warrants.

South Carolina statutes authorize law enforcement activity by law enforcement officers outside their regular jurisdiction in several situations. Eric Devlin does not fall in any of the exceptions. S.C. Code § 17-13-45 confers the same rights, authority, and immunities applicable to a law enforcement officer within his/her “home” jurisdiction when the officer responds to a distress call or request for assistance from an adjacent jurisdiction. South Carolina Code § 5-7-120 authorizes municipal law enforcement officers to respond in cases of emergency to another municipality upon request. These officers have the same law enforcement authority as possessed by the law enforcement officers in the political subdivision which requests assistance.

Additionally, if a law enforcement officer is in pursuit of a vehicle, South Carolina Code § 17-13-40 allows a municipal officer to arrest within a three-mile radius of the corporate limits of a city or town, or within an adjacent county if it is a county officer. The “hot pursuit” statute similarly confers the same rights, authority, and immunities applicable to the law enforcement officer within his/her “home” jurisdiction. S.C. Code § 8-12-10 et seq. permit the exchange of local government employees, which would include county and municipal law enforcement officers, between the political subdivisions. Also, S.C. Code § 23-23-30 grants additional jurisdiction where a law enforcement agency enters into contractual agreements with other law

enforcement agencies as may be necessary for the “exercise of public safety functions,” which include traditional public safety activities which are performed over a specified time period for patrol services, crowd control, traffic control, and other emergency service situations. There was a contract entered into between Cold Justice and the Anderson County Sheriff’s Office, but that does not comply with the requirements of S.C. Code § 23-23-30.

Much more common, however, are agreements pursuant to S.C. Code § 23-1-210 providing for the temporary, intra-state transfer of municipal or county law enforcement officers pursuant to written agreements between the affected governing bodies setting forth the conditions and terms of these temporary officers. In addition, S.C. Code § 23-1-215 allows multijurisdictional, cooperative agreements between multiple law enforcement agencies “to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigations.”

These multijurisdictional agreements have been addressed by the South Carolina Supreme Court in *State v. Boswell*, 391 S.C. 592, 707 S.E.2d 265 (2011). In *Boswell*, the Court, addressing the validity of a search in one county by officers from another county under a 1999 Cooperative Agreement between the two counties, reviewed the requirements of the 2000 Law Enforcement Assistance and Support Act, see Sections 23-20-10, et seq. The Act includes a requirement in South Carolina Code § 23-20-50 (A) that agreements entered into pursuant to that chapter of the Code must be approved by the governing body of each jurisdiction regardless of whether the agreement was entered into before or after the enactment of the Act. From the information available to the defense, that did not happen in this case. None of these exceptions are applicable to the facts of this case.

CONCLUSION

Without determining whether there was probable cause on each of the specific search warrants, Eric Devlin was prohibited from performing extractions on the devices because the search warrant he was relying on as authority lapsed in time and was stale or no longer effective. The statute is clear, Form SCCA 513 is clear, and there is no case law that interprets the statute’s requirement that the search warrant be executed within ten days from the issuance as an advisory

opinion. In fact, the State's prosecuting agency issued an advisory opinion on October 14, 2024, demanding strict compliance with SCCA 513 to be effective.

The Court should be aware that most of the extractions that Devlin performed were already accomplished within the statutory time frame by qualified law enforcement witnesses. The Defendant is unsure why disregarding the statutory demands to allow Devlin to testify is necessary. During pre-trial hearings, the State argued that Devlin has no special formula, he's just the person that ties the case together. Therefore, the State would not be prejudiced, simply inconvenienced, by relying on their original extractions that for the most part complied with the obligations demanded by statute. Regardless, Eric Devlin should not be allowed to testify about anything he learned during his work because he lacked the authority to perform the extractions as the warrant was not executed in the statutorily prescribed time and he was not qualified under the statute to execute the warrants.

If the Court does not find that the 10-day requirement for execution of a search warrant applies to the facts of this case, then it is necessary that each device searched by Eric Devlin be analyzed to see if probable cause was present at the time the search warrant was issued and whether probable cause continued to exist at the time Eric Devlin performed his extractions seven years later. Furthermore, Devlin's PowerPoint presentation includes mountains of inadmissible hearsay that will need to be proffered and ruled on independently.

KENT LAW FIRM, LLC



Shaun C. Kent, Bar #68565
19 South Mill Street
Post Office Box 117
Manning, SC 29102
(803) 433-5368

Manning, South Carolina
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