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**Case Name:** [Jamin Kidron Stocker v. The State of Texas](#)

- **OFFENSE:** Capital Murder
- **COUNTY:** Harris
- **C/A CASE No.** 14-21-00412-CR
- **DATE OF OPINION:** December 8, 2022      **OPINION:** [Justice Kevin Jewell](#)
- **DISPOSITION:** Conviction Reversed
- **TRIAL COURT:** 248th D/C; Hon.
- **LAWYERS:** [Windi Pastorini](#) (Defense); [Cory Stott](#) (State)

**(Background Facts):** In August 2017, Brent Tapp was living in a homeless encampment near downtown Houston. Late at night on August 21, Tapp was shot in the leg. The shot came from the balcony of a nearby townhouse. Tapp and his friend, Trampus Edwards, told responding law enforcement officers that they knew the shooter and that he lived in the townhouse. Tapp and Edwards did not know the shooter’s name but identified the balcony of the unit in which they believed he resided. A witness at trial estimated that the townhouse was less than fifty yards away from where Tapp was shot. The officers conducted a computerized search for the townhouse’s address, and the result showed that Appellant’s name was “associated” with the address. Appellant did not own or rent the townhouse and, in layman’s terms, was a “squatter.” Police showed Tapp a photo of Appellant, and Tapp confirmed that Appellant was the man who shot him. The police obtained and attempted to execute an arrest warrant for Appellant. An officer called Appellant, who said that he was not present at the townhouse. Officers entered the unit, found no one there, and seized a large number of guns and ammunition. Police did not arrest Appellant at that time because they could not locate him.

**[Scales icon] 31.013 Search & Seizure / Search Warrants / Requirements of the Affidavit in Support]:** A few months later, on November 7, 2017, police again responded to a call originating from the homeless camp. Tapp had been shot three times and died as a result of his injuries. The medical examiner recovered a bullet from Tapp’s body, and police matched it to a gun known to belong to Appellant. After the shooting, Appellant left Texas and traveled to Georgia, where he stayed

for approximately seven weeks. Appellant texted his friends, saying that he had to leave Texas because he shot a homeless man and the police were looking for him. Appellant returned to Houston in late October 2017. He was arrested in January 2018 and a Harris County grand jury indicted him on a charge of capital murder. Appellant pleaded not guilty. Prior to trial, Appellant moved to suppress evidence recovered from his cell phone, which police seized during his arrest, as well as cell site location information obtained from Appellant's wireless carrier, T-Mobile, which showed Appellant's general movements from April 2015 to January 2018. After a hearing, the trial court denied Appellant's motions to suppress. The State introduced evidence obtained from Appellant's phone which was detrimental to him, including evidence that he admitted to shooting Tapp in August and that he was concerned about the warrant for his arrest. A jury found Appellant guilty of capital murder as charged in the indictment. On appeal, Appellant argues that the searches of his phone's contents were not supported by probable cause.

**Holding:** Searches of a cellular telephone or other wireless communications device under Texas law are governed by a specific provision of the Code of Criminal Procedure. \*\*\* To search a person's cell phone after a lawful arrest, a peace officer must submit an application for a warrant to a magistrate. \*\*\* The application must "state the facts and circumstances that provide the applicant with probable cause to believe that (A) criminal activity has been, is, or will be committed; and (B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A)." *State v. Baldwin* (see 68, Vol. 30, No. 17; 05/16/2022). \*\*\* A probable cause affidavit supporting a cell phone search must contain evidence of the requisite nexus with more than mere conclusory allegations. For example, the Court of Criminal Appeals recently held [in *Baldwin*] that generic, boilerplate language about cell phone use among criminals is not alone sufficient to establish probable cause to search a cell phone. \*\*\* In *Baldwin*, the Court held that an insufficient factual nexus existed to search the suspect's cell phone when the affidavit supporting the search warrant set forth merely the officer's generalized belief, based on his experience and training, that suspects plan crimes using their phones. \*\*\* We will presume without deciding that the seizure of Appellant's phone was lawful and, in so presuming, we do not reach the merits of Appellant's second issue. We proceed to Appellant's third issue and consider whether the subsequent search of the cell phone's contents was permissible under the Fourth Amendment. We conclude it was not. \*\*\* probable cause affidavit supporting the warrant to search the Samsung phone stated: "*Your Affiant has been a law enforcement officer for approximately 21 years, and has experience in investigating crimes where cellular phones and social media have been used to commit offenses. Your Affiant knows from training and experience that individuals engaged in criminal activities and the flight therefrom, often use cell phones and social media to communicate. Your affiant is requesting a search warrant be issued to "download" Jamin Stocker's cellular phone in an attempt to discover any electronic data, including deleted data, associated with the shooting of . . . the victim related to the aggravated assault he was charged in.*" The remainder of the affidavit contains nothing about a cell phone being used before, during, or after the charged offense. In fact, the affidavit does not mention the offense of capital murder. The offenses described in the affidavit are those for which Appellant was not tried and convicted here. There simply are no facts within the four corners of the affidavit that tie Appellant's Samsung phone to any offense, much less the charged offense of capital murder. \*\*\* The affidavit in today's case is notably weaker than the one

considered and rejected in ***Baldwin***. Considering the four corners of the document, we conclude that the affidavit contains insufficient particularized facts to have allowed the magistrate to determine probable cause for a warrant to search Appellant's Samsung phone for two reasons: (1) the affidavit does not describe the murder, and (2) it presents no factual nexus between the phone and the murder. \*\*\* The trial court erred in denying Appellant's motion to suppress the evidence obtained from the search of Appellant's Samsung phone.

**Ed Note:** The Court of Appeals found that the admission of the evidence from Appellant's cell phone harmed Appellant, as it corroborated his role as the shooter in both August and November. Additionally, although the conviction was reversed, the Court of Appeals also found that the evidence to sustain the conviction was sufficient, and addressed Appellant's claim as to the use of the cell site location information. The Court found that the supporting affidavit contained sufficient information to satisfy ***Carpenter v. United States***, No. 16-402 (06/22/2018), and Article 18B.354, C.Cr.P., because "the facts contained in the affidavit give rise to a fair probability that a search of T-Mobile's cell site location information associated with Appellant's phone would reveal inculpatory evidence that a particular person, Appellant, committed the murder because the location of his Samsung phone would be placed at or near the murder scene at the relevant time."

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#### Sidebars

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([David A. Schulman](#)) Very good work by both trial and Appellate counsel, staying focused on the details related to the search of Appellant's phone, how it tied into the shootings, and how the admission of the information harmed him.

([John G. Jasuta](#)) This affidavit is absolutely worthless as to probable cause. Good opinion and right on the mark.