the Jasuta / Schulman report

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TIBA's Case of the Week

Court of Criminal Appeals

Case Name: ***Jamin Kidron Stocker v. The State of Texas***

- **OFFENSE**: Capital Murder
- **COUNTY**: Harris
- **COURT OF APPEALS**: Houston [14th] 2022
- **C/A CITATION**: 664 S.W.3d 122
- **C/A RESULT**: Conviction Reversed
- **CCA. CASE No**. PD-0711-22 **DATE OF OPINION**: July 31, 2024
- **DISPOSITION**: Court of Appeals Reversed
- **OPINION**: Judge Kevin Yeary **VOTE**: 5-4-0
- **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. 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.

[§§ **31.013 Search & Seizure / Search Warrants / Requirements of the Affidavit in Support**]: 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. In addressing Appellant's complaint on appeal relating to the sufficiency of the affidavit supporting the warrant to justify the search of his cell phone, the Court of Appeals observed that the affidavit contained "nothing about a cell phone being used before, during, or after the charged offense." Citing ***State v. Baldwin***, 664 S.W.3d 122 (Tex.Cr.App. 2022)(see §§, Vol. 30, No. 17; 05/16/2022), the Court of Appeals concluded that the trial court erred by overruling Appellant's motion to suppress the items obtained from the search of his cell phone. Moreover, because it was also unable to conclude that this error was harmless under the standard for constitutional errors, the Court of Appeals reversed Appellant's conviction (see §§, Vol. 30, No. 46; 12/12/2022).

Holding: In ***Baldwin***, this Court decided that mere "boilerplate language" from a police-officer affiant "about cell phone use among criminals" will not, by itself, establish the required probable cause to search a cell phone. Along the way, the Court also said that a warrant affidavit seeking authorization to search a cell phone must "establish a nexus between the device and the offense" under investigation. *** Relying upon ***Baldwin***, the Court of Appeals here concluded that the search warrant affidavit was deficient in two ways. *** First, it said the warrant affidavit "d[id] not describe the murder" that Appellant was on trial for committing. Second, it said that the warrant "present[ed] no factual nexus between the [cell] phone and the murder." *** One way to establish the required "nexus" when it comes to a warrant affidavit to search a cell phone would be through reliable information suggesting that the criminal perpetrator "used" that cell phone "before, during, or after the crime" that is being prosecuted. *** But in ***Baldwin*** this Court was presented with different facts than those which occurred here. And the Court did not say there that "use" of a cell phone in aid of the actual perpetration of the crime that is on trial is, necessarily, the only "specific fact" that can serve to establish the required "nexus," "connection," or "tie" between a cell phone and an offense under investigation. *** To the extent that the Court of Appeals read our opinion in ***Baldwin*** necessarily to require, as a prerequisite of probable cause, that an affidavit must establish (1) use of the cell phone either during, or immediately before or after, commission of (2) the specific offense on trial, it was misguided. Such a showing is not always required before a magistrate may find that a search warrant affidavit "state[s] facts and circumstances that provide . . . probable cause to believe that . . . searching the telephone . . . is

likely to produce evidence in the investigation of" certain criminal activity. *** The Court of Appeals should reexamine its decision.

Concurring / Dissenting Opinions: **Judge Barbara Hervey**, **Judge Bert Richardson**, **Judge David Newell**, and **Judge Michelle Slaughter** concurred, each without note.

Sidebars

(**John G. Jasuta**) Everyone knew, or at least suspected, that the Court would back away from a strict reading of ***Baldwin***. That it came so quickly should be no surprise.

(**David A. Schulman**) Reading the Court of Appeals' opinion and the Court of Criminal Appeals' opinion, it appears that the officer seeking the search warrant had sufficient information to demonstrate the "nexus" required by ***Baldwin***. The truth, however, is that, to some extent, he relied on the very "boilerplate" language that ***Baldwin*** criticized ("*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.*" The officer apparently knew Appellant had communicated facts about the offense via text message (which would have changed the entire dynamic of the inquiry) but neglected to put them into his affidavit. Under the interpretation of ***Baldwin*** nearly everyone was originally using, the Court of Appeals was correct. Under the "revised" interpretation, it was wrong. King's X. As to the remand, I think the Court of Appeals could still reach the same decision, they'll simply have to use different words.