

Virginia Court of Appeals -

Unpublished

Fitch v. Commonwealth: September 24, 2024

Albemarle: Defendant appeals his conviction for Murder on Fourth Amendment grounds.

JAMES ELLIOTT FITCH

v. Record No. 1981-23-2

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY JUDGE DANIEL E. ORTIZ SEPTEMBER 24, 2024

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY Claude V. Worrell, II, Judge1 (Bryan Jones; Bryan J. Jones, LLC, on brief), for appellant. Appellant submitting on brief. Elizabeth Kiernan Fitzgerald, Assistant Attorney General (Jason S. Miyares, Attorney General, on brief), for appellee. James Elliott Fitch appeals his convictions, following a jury trial, for first-degree murder, use of a firearm in commission of a murder, and possession of a firearm after having been convicted of a felony, in violation of Code §§ 18.2-32, -53.1, and -308.2. On appeal, Fitch argues that the trial court erred when it denied his motion to suppress and that the evidence was insufficient to support his first-degree murder conviction. Finding no trial court error, we affirm the convictions.

Facts: The defendant murdered his estranged wife. Police learned that the defendant's cellsite data placed him at the scene of the crime at the time of the offense. Police obtained a search warrant for the defendant's residence to search for, among other items, the defendant's cellphone. The search warrant did not authorize the seizure of the defendant's phone at any other location. While officers were preparing to execute the search warrant, the defendant called the Police and asked to speak to an officer. The defendant voluntarily come to the police station for an interview.

At the police department, the defendant spoke to an officer. During the interview, the defendant confirmed his cell phone number, that he only had one cell phone, and that he always carried his phone. Additionally, the defendant referenced a video that was on his phone, which he believed depicted the victim cheating on him with another man. The officer informed the defendant that other officers were executing a search warrant at his residence and the warrant authorized the seizure of his phone. The defendant asked to

leave, concluding the interview. The officer gave the defendant a copy of the search warrant and seized the defendant's phone.

At the motion to suppress, the officer attested that he was concerned that if the defendant was allowed to leave with his phone, he would destroy any evidence that the device contained. The police did not search the contents of the phone until after they obtained a second search warrant, specific to the phone.

The defendant moved to suppress the results of the search, but the trial court denied the defendant's motion to suppress, finding that probable cause and exigent circumstances justified the seizure of the defendant's phone.

Held: Affirmed. Considering the totality of the circumstances, the Court held that the officer could lawfully seize the defendant's phone under the exigent circumstances exception to the warrant requirement.

The Court began by agreeing that the search warrant did not authorize the seizure of the defendant's phone at the police station. However, the Court ruled that the warrantless seizure of the defendant's phone was reasonable considering the totality of the circumstances. The Court noted that it was likely that the defendant had the phone with him when he killed the victim, based on his statements. The Court also pointed out that the video of the victim and the other man could support a motive for the killing. The Court reasoned that by the end of the interview, both the defendant and the officer were aware of the incriminating evidence likely present on the defendant's phone. The Court pointed out that the defendant's discovery that he was a suspect led him to become agitated, and as the possessor of the phone, which contained important incriminating evidence, he was "aware that the police may [have been] on [his] trail," in the language of *Verez*.

The Court concluded that given the defendant's agitated behavior, it was reasonable for the defendant to fear that if the defendant left the police station with his phone, he would remove evidence from it or destroy it altogether. The Court agreed that the officer did not have time to get a new warrant allowing him to seize the phone from the defendant at the police station before the defendant left or destroyed the evidence.

Tags: Fourth Amendment – Exigent Circumstances - Cellphones