THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 22021-001527

Tina Patton,

Appellant,

v.

Linda Doty, Respondent.

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Appellant, Ms. Tina Patton, by and through her counsel, Thornwell Simons, respectfully moves before this Court to reverse the Court below's decision affirming her Richland County Magistrate Court conviction for Contempt of Court, for the following reasons:

1. The Trial Court lacked subject matter jurisdiction to hear the case in the absence of an arrest.

2. The Trial Court committed an error of law and/or abused its discretion in allowing a criminal trial to take place in the absence of an appropriate prosecuting authority.

3. The Trial Court committed an error of law and/or abused its discretion in allowing a criminal trial to take place when Defendant had been provided with no adequate notice of the charges against her and no discovery at all prior to the date of trial.

4. The Trial Court committed an error of law and/or abused its discretion in refusing Defendant's request for a jury trial.

QUESTIONS PRESENTED AND ANALYSIS

I. DID THE TRIAL COURT HAVE SUBJECT MATTER JURISDICTION, IN THE ABSENCE OF AN ARREST, OVER ALLEGED CONTEMPT OUTSIDE THE PRESENCE OF THE COURT?

Respondent relies upon S.C. Code §22-3-550, which grants South Carolina magistrate judges "jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both."

This argument is inapposite because Ms. Patton was never charged with an "offense" within the meaning of S.C. Code §22-3-550. Her case below was present on the civil docket, not the criminal. She was never arrested; she was never presented with a charging document; no criminal warrant exists describing her conduct, there is no indictment, there is not even a Uniform Traffic Ticket. No such document is present in the record below because no such document exists. (R, 1-271, inclusive).

Such an arrest is a requirement for magistrate jurisdiction to attach in the present instance,

because the Court below did not have jurisdiction to charge for indirect contempt outside the presence of the Court. Magistrate courts are courts of limited jurisdiction and their powers are set by the South Carolina Constitution and statute, not common law. *See* S.C. Constitution, Article V, Section 26, "Magistrates" ("The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction."). *See also* S.C. Code §22-3-510 et seq. (limiting the jurisdiction of magistrate courts); see also *Martin v. Ellisor*, 264 S.C. 202, 213 S.E.2d 732 (S.C. 1975) (holding specifically that Richland County Magistrate Court is a court of limited jurisdiction). As such, the Richland County Magistrate Court only has jurisdiction where the legislature has expressly granted same by statute. *Bayly v. State*, 724 S.E.2d 182, 397 S.C. 290 (S.C. 2012) (stating that South Carolina Magistrate Courts have jurisdiction as granted by the legislature).

As explained previously, South Carolina magistrate courts do not have general jurisdiction over *indirect* criminal contempt unless the individual has been arrested and charged with the crime of contempt (specifically, either a violation of §16-03-1770, violation of a magistrate's restraining order, or of § 22-03-950, direct contempt). This is made clear by the utter absence, in §22-3-950, of any mention of any grant of jurisdiction over alleged contempt *outside* the presence of the Court; the statutory language specifically *limits* its grant of jurisdictional authority to direct contempt in the presence of the Court. This is a clear distinction from the *general* grant of contempt authority to *Circuit* Courts under §14-5-320 ("The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same.") If the Legislature had meant to grant similar broad contempt power to magistrate judges, it would have

done so clearly. It did not. It specifically granted only limited authority, and these facts are outside those limits.

Respondent further argues that "it would be nearly absurd to have a judicial system in which a judge could not hold a person in contempt for violating his or her duly issued order." It would. Such is not the case here. South Carolina courts do have the power to enforce their orders. This is demonstrated by the fact that individuals are frequently and routinely sentenced criminally for violating South Carolina magistrate court restraining orders. They are just usually arrested first, as the law requires. *See* S. C. Code §16-3-1770 ("Law enforcement officers *shall* arrest a defendant who is acting in violation of a restraining order")(emphasis added). The Court could have, upon a finding of probable cause, ordered such an arrest and allowed normal due process procedure to unfold pursuant to that arrest. The Court did not do so. That is the absurdity. The absurdity here is that Ms. Patton was forced into a sudden criminal trial with no arrest, no prosecutor, no discovery, and no jury, in front of a court of limited jurisdiction with no constitutional or statutory authority to order such a proceeding. The absurdity here was the enforcement of criminal penalties without the due process rights to which criminal defendants are entitled.

This may seem like a purely technical objection, but as explained previously and below, that initial error led to multiple significant and substantial failures of due process. As a threshold matter, however, because there was no arrest here, and because no statute grants the magistrate court jurisdiction over indirect criminal contempt outside the Court's presence without an arrest, this case is void for lack of subject matter jurisdiction. "[I]ssues related to subject matter jurisdiction may be raised at any time." *State v. Rogers* (S.C. App. 2016). Appellant therefore requests that her conviction be reversed and the charges against her declared void and dismissed.

II. DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR OF LAW BY REFUSING TO DISMISS MS. DOTY'S ALLEGATIONS OF CRIMINAL CONTEMPT WHEN THERE WAS NO PROPER PROSECUTOR AND MS. DOTY LACKED STANDING TO REQUEST A CRIMINAL REMEDY?

Respondent asserts that "It is elementary that any individual has a right to have a licensed attorney represent him or her in a legal proceeding." This is an absolutely correct statement, and Respondent absolutely had the right to be represented in a civil contempt proceeding by counsel of her choice.

The problem, as stated previously, is that Ms. Patton was not experiencing a civil proceeding, because all parties, including the Court, agreed that there was no ongoing civil violation of the Court's order. (R, 17-20, 244-47). The civil proceeding was moot as of the day of trial. *Id.* The only question remaining, then, was one of criminal contempt. When Respondent's counsel "simply presented the evidence and testimony based on what was in the Complaint," respondent's counsel was acting as a criminal prosecutor, and such is expressly forbidden. *See State v. Sossamon*, 378 S.E.2d 259 (S.C. 1989) (allowing *only* state prosecutors, arresting officers, or officer's supervisors to prosecute cases in South Carolina magistrate Courts; *In re Richland Cnty. Magistrate's Court*, 389 S.C. 408, 699 S.E.2d 161 (S.C. 2010) ("[A]llowing prosecution decisions to be made by, or even influenced by, private interests would do irreparable harm to our criminal justice system.")

This does raise the question – who *should* have "presented the evidence and testimony" in such a proceeding? Someone would have had to, because this was an indirect contempt proceeding, about matters outside the presence of the Court, so judicial notice could not be taken. The obvious

answer is that a prosecutor or arresting officer should have – but no such person existed, because no arrest had taken place, one error leading to further errors. In the absence of such a person, there was no one present with standing to pursue a criminal complaint or request criminal remedies, and Respondent's request for such should have been summarily dismissed.

III. DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR OF LAW AND/OR ABUSE ITS DISCRETION BY ALLOWING A TRIAL TO TAKE PLACE WHEN DEFENDANT HAD BEEN PROVIDED WITH NO ADEQUATE NOTICE OF THE CHARGE SHE FACED AND NO DISCOVERY IN ADVANCE OF THE TRIAL DATE, IN VIOLATION OF THE REQUIREMENTS OF *BRADY* AND SCRCP, Rule 5?

Respondent maintains that a civil complaint can provide adequate notice of a criminal charge. Appellant is aware of no authority which could possibly support such an assertion. Similarly, the text of a restraining order may warn that a criminal charge is a potential result of a violation of said order, but it cannot provide adequate notice, by itself, of an actual criminal charge. Article I, Section 14 of the South Carolina Constitution states that "Any person charged with an offense shall enjoy the right . . . to be fully informed of the nature and cause of the accusation." A mere private civil complaint cannot provide adequate notice of the danger of criminal conviction and criminal penalties.

Respondent also alleges that "Appellant had significant information to put her on notice as to what was going on in this case." Parties to a dispute often do have information about the dispute. They are nevertheless entitled to discovery, because their information may be may be incomplete, may require explanation or analysis by trained counsel, or may be supported or contradicted by other available information or evidence. The standard is not that "significant" information be provided to the defendant in a criminal proceeding; the standard is set by SCRCE Rule 5 and by

Brady v. Maryland, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150, (1972), *Arizona v. Youngblood*, 488 U.S. 51 (1988) and *Kyles v. Whitley*, 514 U.S. 419 (1995).

Ms. Patton may have had "significant" information. She did not have, specifically, "any relevant written or recorded statements made by the defendant," a "copy of [her] prior criminal record, if any"; or copies of "books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution."

We know specifically that relevant and material incident reports were available but not provided, because they somehow ended up in the Record on Appeal. (R, 72-77). We do not know what other incident reports may also exist and be in the custody and control of the Richland County government, because there was no arresting officer in this matter and no prosecutor was ever assigned, so there was never a person attached to this case who would have had both duty and opportunity to collate such evidence and provide it to the defense. Again, the Court's initial error below – the decision to proceed with a criminal trial in the absence of an arrest – led to further errors; because there was no proper prosecuting authority, no discovery was provided, and the result is a *Brady* violation clearly manifest within the record on appeal.

Respondent's counsel asserts that "Respondent is not aware of any materials which present Ms. Doty's claims as false or shed doubt on her credibility" and that "Respondent is not aware of any evidence not provided to [A]ppellant's attorney which was material to the Ms. Patton's guilt or innocence or was impeaching." Respectfully, Respondent's knowledge, or even Respondent's counsel's knowledge, is not relevant, because Respondent and Respondent's counsel were not proper prosecutors.

What is relevant, and what we *know* – because it somehow entered the Record on Appeal -- is

that there was potentially exculpatory material relevant to the defense, in the custody and control of the State, which was not turned over to the defense or to defense counsel before trial. (R, 72-77). It is presumptively relevant because it was included in the Record on Appeal by the magistrate court. It was not turned over to the defense prior to trial. (R, 209). It is potentially exculpatory for the reasons previously stated in Appellant's initial brief. The discovery of this *Brady* violation requires, at minimum, reversal and remand under *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) (requiring remand for a new trial where after-disclosed evidence was material, exculpatory, and had a "reasonable probability" of altering the results of the proceeding below). Because there is no proper prosecuting authority below who could ensure that no further violations of Defendant's discovery rights are protected, however, no future fair trial can occur, and thus dismissal is the only remaining valid remedy.

IV. DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR OF LAW WHEN IT DENIED MS. PATTON'S REQUEST FOR JURY TRIAL?

Respondent, like the trial court below, relies upon *Dimarco v. Dimarco*, 393 S.C. 604, 713 S.E.2d 631 (S.C. 2011), which establishes a right to a jury trial for contempt sentences assigned in the circuit courts "when a criminal sentence of more than six months incarceration" is to be imposed. *Dimarco* is inapposite because S.C. Code §22-2-150 provides for the right to a jury trial in *all* criminal cases within the magistrate court. S.C. Code §22-2-150 (1979); *see also State v. Warren*, 255 S.E. 2nd 668, 273 S.C 159 (1979).

This was a criminal case within the magistrate court. Ms. Patton therefore had a statutory jury trial right under §22-2-150. "A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge." S.C. Crim. P. Rule 14. As no solicitor was present to approve

such a waiver, it was not *possible* for Ms. Patton to waive her right to jury trial, even if her Counsel had failed to raise the issue entirely.

CONCLUSION
AND REQUEST FOR RELIEF

Appellant was denied her right to advance notice of the charges against her, her right to be tried in a Court of competent jurisdiction, her right to an appropriate prosecutor, her right to discovery, and her right to jury trial. These errors by the trial court constituted errors of law and abuses of discretion.

Appellant Tina Patton therefore requests the following relief:

I. **That this Court rule the judgment and sentence below is VOID for lack of subject matter jurisdiction.**

II. **That the trial Court's denial of the motion to dismiss for lack of standing and lack of appropriate prosecution be REVERSED, and the charge below DISMISSED on those grounds.**

III. **That the trial Court's denial of the motion to dismiss for lack of discovery be REVERSED, and the charge below DISMISSED on those grounds.**

IV. **That, in the alternative, if the above requested relief is not granted, that the trial Court's denial of Appellant's request for jury trial be REVERSED, and the charges REMANDED and set for jury trial.**

Respectfully submitted,

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Counsel for Ms. Patton

CERTIFICATE OF COMPLIANCE

Counsel hereby certifies and attests that the foregoing document complies with the requirements of SCACR 211(b).

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This 17th day of August, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have, or immediately will, cause a copy of the foregoing document to be served upon opposing counsel in the above captioned case.

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This 17 day of August, 2022