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Mar 29 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
The Honorable Victor G. Stephens, Magistrate Court Judge
The Honorable Dianne S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001524

THE STATE,

Respondent,

v.

LOUIE WEATHERS,

Appellant.

PETITION FOR REHEARING

On March 22, 2023, this Court issued an unpublished opinion reversing the order of the Honorable Dianne S. Goodstein, circuit court judge, which reversed the order of the magistrate court dismissing Appellant Louie Weathers's DUI charge on the grounds that the State had committed a discovery violation. State v. Weathers, Op. No. 2023-UP-5922 (S.C. Ct. App. filed March 22, 2023). Pursuant to Rule 242 of the South Carolina Appellate Court Rules, the State respectfully petitions this Court for rehearing.

In its opinion, this Court held the circuit court exceeded its authority in reversing the magistrate's order because it considered issues not raised to it and made its own factual findings. However, this Court overlooked the valid, independent legal basis supporting the circuit court's

order. The circuit court properly recognized the underlying legal error in the magistrate's ruling: it dismissed the case based for a Rule 5 discovery violation without a showing of prejudice by Weathers.

The circuit court held there was no evidence in the record to support a finding that Weathers was prejudiced by the delay in discovery. (R.105–06, 113). This was a legal ruling on an issue that was properly presented. Accordingly, even if the circuit court erred by making factual findings regarding the "willfulness" of the State's conduct, there is an independent legal basis to support the circuit court's reversal of the magistrate court's dismissal that was properly preserved for review.

As explained in the Brief of Respondent,¹ the magistrate committed legal error by dismissing the DUI charge based on a late discovery response without a showing of prejudice. The State properly raised this issue to the magistrate, but he dismissed the case anyway without making the required finding. (R.32). The State raised this same argument to the circuit court, and the circuit court correctly held this was error, explaining "there is no evidence in the record to support a finding that delay by [the State] in providing a response to discovery prejudiced [Weathers's] right to a fair trial." (R.113).

Accordingly, even if the circuit court engaged in improper fact finding regarding the "willfulness" of the late disclosure, its decision rests on a valid, independent legal basis. The magistrate committed an error of law by dismissing this case without considering whether Weathers was prejudiced by the delay in discovery. The circuit court properly reversed on this

¹ Respondent incorporates herein the arguments contained in its brief.

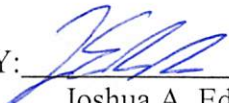
basis. The State respectfully requests that this court grant rehearing and affirm the order of the circuit court.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne Mueller, certify I have served the within Petition for Rehearing on Dayne C. Phillips, Esquire, counsel for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 29th day of March 2023.



Anne Mueller
Legal Assistant

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Subject: The State v. Louie Weathers, 2020-001524
Date: Wednesday, March 29, 2023 2:40:00 PM
Attachments: [image001.png](#)
[Weathers Louie - Petition For Rehearing \(03254116xD2C78\).PDF](#)

Good afternoon, Mr. Phillips.

Attached to this email is the State's Petition For Rehearing in the above referenced matter. We will be filing this petition with the court electronically later today using AIS One Drive.

If you don't mind, please confirm your receipt of the petition by return email.

Thank you for your cooperation.

Sincerely,

Anne Mueller, Legal Assistant

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