

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Apr 10 2023**

**SC Court of Appeals**

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Victor G. Stephens, Magistrate Court Judge  
Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2020001524

Case No. 2020-CP-18-00905

The State,

Respondent,

v.

Louie Weathers,

Appellant.

**RETURN TO PETITION FOR REHEARING**

This Court properly held that “the circuit court erred when it reversed the magistrate’s order by considering issues not raised to it and making its own factual findings.” Specifically, the Circuit Court erred in conducting a *de novo* review of the record and by failing to review only preserved errors of law. Defense Counsel explained to the Circuit Court, “[t]he State has conceded that there’s no error of law to dismiss a case for a Rule 5 violation”, and “[t]here’s also no question that there was plenty of evidence for [the Magistrate Court] to support his decision of a dismissal.” (R. 100, lines 15-20). Defense Counsel also emphasized that Trooper Davis agreed on the trial date and never moved for a continuance. (R. 100, line 20 – 101, line 8; 103, lines 1-3).

The Circuit Court also erred in finding that Defense Counsel had an obligation to notify the State of their intent to move for dismissal because it had not been ruled on by the Magistrate

Court and had no effect on whether there was any evidence to support the Magistrate Court's decision to grant the motion to dismiss. *See Henderson*, 347 S.C. at 457, 556 S.E.2d at 692; S.C. Code Ann. § 18-3-70. The Circuit Court further erred in finding that "the Magistrate had several less severe sanctions available under the circumstances" because it had not been ruled on by the Magistrate Court and had no effect on whether there was any evidence to support the Magistrate Court's decision to grant the motion to dismiss (particularly when Trooper Davis never moved for a continuance or requested a lesser sanction). *Id.*

Furthermore, this Court did not overlook the Circuit Court's erroneous rulings because there is evidence which reasonably supports the Magistrate's Court's finding that the State's failure to timely disclose material evidence prior to the scheduled bench trial prejudiced Appellant's right to a fair trial. Defense Counsel originally argued to the Magistrate Court that the State's untimely disclosure of material evidence was "prejudicial to the [Appellant]" because "[Defense Counsel] have not had an opportunity to look at anything" and "it's a violation of due process[.]" (R. 3, lines 14-17).

Defense Counsel also addressed the prejudice created by the State's admitted failure to timely disclose material evidence during the hearing on the State's motion to reconsider:

The case was scheduled for trial in this court on January the 29<sup>th</sup>. This was not an oversight, we just didn't receive the discovery. Your honor, . . . we were here to try the case...

...

You heard arguments of counsel, you had a motion to dismiss before you, you heard all the facts, you heard the chronology, the timeline related to the failure of the State to produce discovery, and you ruled on it. And it was within your discretion in accordance with Rule 5 of the South Carolina Criminal Rules of Procedure . . . [W]e sought a dismissal because that's what justice demanded at the time. You heard our arguments. You didn't continue the case, you had the discretion to continue it. You had discretion that they order to produce it, and recess and come back another day. You had those

options. *We asked that the case be dismissed because of the deprivation of rights associated with the failure to produce the discovery.* And specifically, that *Rule 5 states that you have the discretion to enter such other order as the court deems just and appropriate.* You made a decision that you deemed just and appropriate . . .

...

Mr. Moore [Counsel for SCDPS] *understands that in order to properly prepare for trial, in order to present a case, in order to confront and cross examine witnesses,* we are entitled not only to all the evidence the State intends to produce that is incriminating as to the defendant and is helpful as to the prosecution's case, but also all exculpatory information, that which may tend to prove innocence We have a right to those materials. *We appeared to try the case, but they hadn't produced those materials. That put us at a distinct disadvantage in trying the case.* There was no way that the case could be tried on the 29<sup>th</sup>, the date it was set, without those discovery materials. . . . But these rules are in place for a reason.

(R. 25, line 9 – 27, line 7) (emphasis added).

Unlike Appellant, who was scheduled for a bench trial, the defendant in *State v. Wilkins* “was in no different position on the date of disclosure then he would have been had disclosure been timely made.” *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1993). As this Court found, the Magistrate Court thoroughly considered the briefs and arguments of both the State and Defense Counsel at two hearings and made its decision to grant the motion to dismiss on a sound evidentiary basis. *See* Rule 5(d)(2), SCRCrimP; *Kerr*, 330 S.C. at 150, 498 S.E.2d at 221 (citing *State v. Davis*, 309 S.C. 56, 419 S.E.2d 820).

Based on the forgoing reasons, Appellant respectfully requests that this Court deny the Respondent's Petition for Rehearing and uphold the Court's reversal of the Circuit Court's order.

**[Signature Page to Follow]**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dayne Phillips", written over a horizontal line.

Dayne Phillips  
S.C. Bar No. 77712

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**CERTIFICATE OF SERVICE**

The undersigned Counsel certifies that a true copy of the Return to Petition for Rehearing has been served upon **Joshua A. Edwards, Esquire**, at the South Carolina Attorney General's Office, PO Box 11549, Columbia, SC 29211, by United States Mail, postage prepaid, and by email on April 10, 2023.

s/ Dayne C. Phillips

Dayne Phillips

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Attorney for Appellant

SUBSCRIBED AND SWORN TO before me  
this 10th day of April, 2023.

Courtney Powers (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.