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Aug 15 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2022-001441

The State,Respondent,

v.

Deshawn Chazz Hurley,.....Appellant.

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, Mr. Hurley petitions this Court to rehear this matter because the Court overlooked or misapprehended the following:

A. Timeliness of Discovery.

This Court acknowledged Mr. Hurley “allege[d] violations of Rule 5, SCRCrimP, and his right to due process.” Slip Opinion, p. 2. This Court assumed a violation of Rule 5 but resolved the issue due to the perceived lack of prejudice. This Court focused on the nature of the materials disclosed and not the timing of the disclosure. Rule 5(a)(1)(C), however, requires timely disclosure of evidence, “which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial.” Here the disclosed for the first time the State’s theory of the case. That many of the materials might have been in the public domain does not relieve the State of its obligation to timely provide the evidence.

Additionally, this Court held because “these social media posts and photos could be considered exculpatory, an analysis under *Brady*¹ is not necessary.” In his brief, Mr. Hurley relied on *Kyles v. Whitley*, 514 U.S. 419, (1995), *Brady*, *Roviaro v. U.S.*, 353 U.S. 53 (1957), and *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006). Although most of these cases involve *Brady*, all of the cases involve due process considerations broader than *Brady*. *Roviaro*, moreover, involved disclosure of inculpatory evidence that was necessary for the preparation of the defense.

B. Gang-Related Evidence.

This Court identified the issue: “It appears that defense counsel wanted the State to produce a paper copy of the gang book.” Slip Opinion, p. 4. Framing the issue in this manner is error because no one knows the contents of the gang book because the trial court never reviewed it. Not reviewing the gang book was an abuse of discretion. *State v. Hughes*, 346 S.C. 339, 552 S.E.2d 35 (Ct. App. 2001) (trial court had the authority and discretion to require production of notes used by expert witness to refresh her memory prior to trial).

Additionally, the gang book was relevant to sentencing, where Mr. Hurley has a right to disclosure and assistance of counsel. *Missouri v. Frye*, 566 U.S. 134 (2012); *Lafler v. Cooper*, 566 U.S. 156 (2012); *Brady*; *Roviaro*.

C. Gunshot Residue Evidence

This Court assumed error but concluded, “[W]e cannot say the admission of the testimony regarding gunshot residue prejudicially affected the outcome in this case.” This Court, accordingly, applied the incorrect standard of review. The correct standard of review is “whether beyond a reasonable doubt the trial error did not contribute to the guilty

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

verdict.” *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (citing *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012)).

D. Mistrial.

This Court reasoned Mr. Hugely did not suffer prejudice because “no testimony was actually given in response to the question.” Slip Opinion, p. 6. However, it is well settled prejudice can result from the manner in which a solicitor asks a question. *See, e.g., State v. Reyes*, 432 S.C. 394, 853 S.E.2d 334 (2020) (solicitor’s use of first-person pronoun “we” when questioning child complainant about telling truth improperly bolstered complainant’s testimony); *State v. Anderson*, 181 S.C. 527, 188 S.E. 186, 192 (1936) (“asking of questions by a Solicitor, a quasi-judicial officer, which has the effect of attacking the reputation of a defendant whose reputation has not been put in issue, constitutes prejudicial error”).

E. Directed Verdict.

This Court held, “And though this case is largely based on circumstantial evidence, we find the evidence sufficient for a reasonable juror to “fairly and logically deduce[]” guilt.” Slip Opinion, p. 8 (alteration in original). Mr. Hurley asked the trial judge and this Court to define the meaning of “substantial circumstantial evidence.” This Court did not address this request. Once this Court defines the meaning of substantial circumstantial evidence, the need to reverse will become apparent.

This Court also erred when applying the waiver rule. E.g. *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013). Here, Mr. Hurley’s testimony did not fill in the gaps for the State. Additionally, Mr. Hurley testified before his co-defendant, so it was error for this

Court to rely on the testimony of co-defendant Narkevious Reid when applying the waiver rule. *Hepburn*; see also *State v. Phillips*, 416 S.C. 184, 785 S.E.2d 448 (2016)

F. New Trial.

This Court held, “Because we find no errors in the trial judge's rulings, the cumulative error doctrine is inapplicable.” Slip Opinion, p. 8. As noted above, this Court assumed error in more than one issue presented but disposed of those issues based on a perceived lack of prejudice. Therefore, it was error for this Court not to apply the cumulative error doctrine.

CONCLUSION

This Court should rehear this matter, withdraw its Opinion, reverse the trial court, and remand this matter for a new trial.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

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