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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County
Lee Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODERQUIZ ROZELLE COOK,

APPELLANT

INITIAL BRIEF OF APPELLANT
APPELLATE CASE NO. 2013-000819

JARED C. WILLIAMS
Lawton Law Firm, LLC
496 Bramson Ct., Suite 100
Mt. Pleasant, SC 29464
(843) 881-9901

BOB DUDEK
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

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STATEMENT OF THE CASE

Appellant, Roderquiz Cook, was convicted of Murder, Attempted Armed Robbery, and Conspiracy during the Lexington County Court of General Sessions before the Honorable Lee Alford, Judge. Deon O'Neill appeared on behalf of the Defendant. Nancy Gunter Cote and Heather Weiss appeared on behalf of the State. Appellant was sentenced to imprisonment for a period of thirty (30) years for Murder, twenty (20) years for Attempted Armed Robbery, and five (5) years for Conspiracy.

Appellant filed a timely Notice of Appeal. This brief follows.

STATEMENT OF THE ISSUE ON APPEAL

Was the Defendant provided a fair trial when the prosecution withheld cell tower site records of the Defendant and co-conspirators until the day prior to the trial, withheld additional testimony of a co-conspirator explaining her role in the alleged conspiracy until the closing of pre-trial motions, withheld a confession by a different co-conspirator that he was the triggerman in the alleged murder until the closing of pre-trial motions, and withheld additional cellphone address records of the Defendant and co-conspirators until the second day of trial?

STATEMENT OF RELEVANT FACTS

Defendant Roderquiz Cook (hereinafter "Defendant"), was arrested and charged with Murder, Attempted Armed Robbery, and Conspiracy. (Tr. April 8, p. 194, ll 3-5). The essence of the State's case was that, while Defendant was employed as the manager of a McDonald's located in Batesburg-Leesville, he conspired with his girlfriend, Tasha Matthews; cousin, Meon Miller; and friend, Angelo Tucker, for them to come in and rob the store late at night when Defendant was closing. (Tr. April 8, p. 191, ll 6-9). According to the State, on the night of October 13, 2010, Defendant's girlfriend, Tasha Matthews, drove Meon and Angelo and dropped them off near the McDonalds around 11:30 p.m.. (Tr. April 8, p. 191, ll 5-14). Defendant and co-employee, Willie Jennings (hereinafter "Mr. Jennings"), were the only employees remaining on duty at the time. (Tr. April 8, p. 191, ll10-14). According to the State, when Meon and Angelo arrived at the McDonald's, Mr. Jennings was outside taking out the trash. (Tr. April 8, p. 191, ll 10-19). Meon and Angelo attempted to take Mr. Jennings hostage and bring him back into the store. (Tr. April 8, p. 191, ll 15-19). While outside, a struggle occurred and Mr. Jennings was shot and killed. (Tr. April 8, p. 191, ll 20-25).

The specific facts relevant to the grounds for this appeal pertain to the defense counsel's (hereinafter "Mr. O'Neill") pretrial motions for discovery materials. Specifically, during pre-trial motions, Mr. O'Neill renewed his Rule 5 Motion for any outstanding discovery. (Tr. April 8, p. 63, ll 17-21). In response, the State specifically stated that they had provided Mr. O'Neill with new discovery the day prior to the trial and that there was nothing beyond that. (Tr. April 8, p. 63, ll 22-25). That information related to cell tower site information from the cell phones of the Defendant and the co-conspirators. (Tr. April 8, p.

64, ll 1-2. The State's reason for its delay was simply that "we just didn't realize there was a separate file somewhere with the site information." (Tr. April 8, p. 64, ll 8-16).

Next, Mr. O'Neill specifically moved for a *Brady/Riddle* Motion to obtain any information that the State may have of newly changed statements of the co-conspirators. (Tr. April 8, p. 64, ll 18-24). In response, the State told the court that they turned over everything as it has come into possession and they had no new evidence in their possession at that time. (Tr. April 8, p. 65, ll 18-25; p. 66, ll 1-25; p. 67, ll 1-7). Then, Mr. O'Neill specifically asked the Court- "have they spoken to any co-defendant, Tasha Matthews, Meon Miller, Angelo Tucker, since the last statement I had from those individuals that either written or verbally contradicts anything they said previously?" (Tr. April 8, p. 66, ll 17-22). In response, again, the State replied "[t]here's nothing- I am not aware of anything that's contradictory to anything they said before." (Tr. April 8, p. 66, ll 23-25).

At this point, the court goes into recess to provide the judge time to research Defendant's other pre-trial motions. (Tr. April 8, p. 116, ll 23-25; p. 117, ll 1-4). Upon returning, the Court rules on several of Mr. O'Neill's other pretrial motions. Then, at the close of pre-trial, and right before the court is prepared to swear in the jury and begin opening statements, the State presented new evidence to Mr. O'Neill that relates to changed and/or additional testimony of two of the co-conspirators. (Tr. April 8, p. 131, ll 1-25; p. 132, ll 1-25). The first statement is that co-conspirator, Tasha Matthews, now states that Defendant was dealing drugs in Batesburg-Leesville. (Tr. April 8, p. 132, ll 13-25; p. 133, ll 1-9). She later testifies that she had no knowledge of any robbery in place when she was driving Meon and Angelo to Batesburg but, instead, thought they were going out there to do a drug deal. (Tr. April 9, p. 305, ll 10-17).

The next statement is one by co-conspirator, Meon Miller. Meon Miller now confesses to pulling the trigger and killing Mr. Jennings on the night of the alleged incident, where as before both Meon and Angelo had adamantly denied being the triggerman. (Tr. April 8, p. 131, ll 13-25; p. 132, ll 1-12). The State explained that they had interviewed Meon Miller "a week or so prior" to the trial and he had changed his testimony and confessed to the shooting. (Tr. April 8, pp. 133-45). The only statement Mr. O'Neill had in his possession was a denial that had been obtained in September of 2011. After extensive debate, the trial judge simply asked that the State disclose the contents of their meeting with Mr. O'Neill and he postponed the opening statements until the following morning. (Tr. April 8, pp. 145-54; Tr. April 8, pp. 168-83).

On the second day of trial, immediately before the openings were to begin, the State hands over additional evidence relating to the cellphone records of the Defendant and the three co-conspirators. (Tr. April 9, p. 183, ll 23-25; p. 184, ll 1-14). This information was a list of addresses that went with the numbers that were provided to the Defendant the day prior to the trial. (Tr. April 9, p. 184, ll 1-6).

ARGUMENT

I. The prosecution's withholding of four separate pieces of evidence was in violation of *Brady v. Maryland* and Rule 5, SCRCP, that deprived Defendant of a fair trial.

There is no general federal constitutional right to discovery in a criminal case. *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). The federal constitution gives the defense no greater right to discovery than exists under South Carolina law. *See generally, State v. Jones*, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996); *Weatherford v. Bursey*, 429 U.S. 559 (1977). However, in response, state courts are generally free to limit the nature and extent of discovery in criminal cases. *See id.*

Nevertheless, a defendant has a due process right, under both the federal and State constitution, to present a defense. *See* U.S. Const. Amend. XIV; S.C. Const. art. I § 3. The right to present a defense includes a right to *effectively* cross-examine witnesses at trial. *Davis v. Alaska*, 415 U.S. 308 (1974) (emphasis added). The defendant also has a due process right to have the prosecution disclose all evidence that is favorable to the defendant and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83 (1963). Therefore, the rules of discovery must include procedures to ensure that the defense receives all of the evidence that the prosecutor is constitutionally required to disclose and does so in a timely fashion. *See State v. Freeman*, 459 S.E.2d 867, 319 S.C. 110 (1995).

Rule 5 of the South Carolina Rules of Criminal Procedure codifies South Carolina's obligations under *Brady*. *See* Rule 5, SCRP. The prosecution's duty under *Brady* applies to sentencing as well as to trial. *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, Rule 5 provides for the disclosure of documents and tangible objects "which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at

the trial. . . . " Moreover, Rule 5 provides a continuing duty to disclose by stating that "[i]f, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he *shall promptly* notify the other party or his attorney or the court of the existence of the additional evidence or material." Rule 5, SCRCP (emphasis added).

Pursuant to *Brady*, the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. *See also, State v. Freeman*, 459 S.E.2d 867, 319 S.C. 110 (1995); *Duncan v. State*, 281 S.C. 435, 315 S.E.2d 809 (1984). In the realm of *Brady* disclosure requirements, the duty to disclose also applies to evidence that would tend to impeach the credibility of a government witness whose testimony is central to the government's case. *Giglio v. United States*, 405 U.S. 150 (1972). Reversal of a conviction is required if the undisclosed evidence is material and the omission deprived the defendant of a fair trial. *United States v. Agurs*, 427 U.S. 97, 96 S. Ct. 2392 (1976).

As it is difficult sometimes to assess the materiality of evidence before trial, the United States Supreme Court has stated that prosecutors are to take a broad view of materiality and err on the side of disclosure. *Kyles v. Whitley*, 514 U.S. 419, 432-33 (1995). The constitutional standard of materiality is met "if the omitted evidence creates a reasonable doubt that did not otherwise exist." *State v. Freeman*, 459 S.E.2d 867, 319 S.C. 110 (1995) (*citing United States v. Agurs*, 427 U.S. 92 (1976)). A new trial is required under *Brady/Giglio* if the testimony could "in *any reasonable likelihood* have affected the judgment of the jury. . . ." *Giglio v. United States*, 405 U.S. 150 (1972) (*citing Napue v.*

Illinois, 360 U.S. 264, 271 (1959)) (emphasis added). Moreover, when more than one possible error alone may not constitute a reversible error independently, the aggregation of errors may produce a cumulative effect of prejudice to justify reversal. *See* 319 S.C. 134 (*citing State v. Freeman*, 459 S.E.2d 867, 319 S.C. 110 (1995)).

In the case at bar, there were essentially four separate pieces of information/evidence that the State failed to *promptly* provide in a timely fashion to the Defendant in compliance with *Brady/Giglio* and Rule 5, SCRCP. These are, in chronological order, i) cell tower site information of the Defendant and co-conspirators that weren't provided until the day before the trial; ii) additional testimony of co-conspirator, Tasha Matthews; ii) a newly discovered confession to being the triggerman by co-conspirator, Meon Miller; and iv) additional address information relating to the Defendant and co-conspirator's cellphone records.

A) Cellphone Information

The first piece of evidence that was not *promptly* disclosed pursuant to Rule 5, South Carolina Rules of Criminal Procedure was the cell tower site information that wasn't provided until the day before the trial. (Tr. April 8, p. 64, ll 22-25). This evidence was material to the prosecution's case-in-chief, as evidenced by their reference to it i) in opening statement (Tr. April 9, p. 192, 24-25; p. 193 1-3); ii) by the calling of the prosecution's witness, Ms. Johnson, who was employed by T-Mobile, as custodian records (Tr. April 9, p. 237, ll 8-15); iii) calling of prosecution's witness Jay Dobbins, as custodian records for AT&T (Tr. April 9, pp. 372-74); and iv) their use throughout the prosecution's case-in-chief for co-conspirator Tasha Matthews (Tr. April 9, p. 267; ll 14-25). In summary, there is constant evidence throughout the record to show that the cellphone records were essential to the prosecution's case-in-chief. As such, any evidence in relation to that information should

have been handed over *promptly* to Mr. O'Neill in accordance with *Brady* and Rule 5 so that he could effectively cross-examine the witnesses against the Defendant. Failure to do so deprived the Defendant of a fair trial.

B) Additional testimony of Tasha Matthews

The next piece of evidence was the additional testimony of co-conspirator, Tasha Matthews. (Tr. April 8, p. 132, ll 13-24). Specifically, Tasha Matthews added to her testimony to state that Defendant was dealing drugs in Batesburg and that, during the entire time she was driving Meon and Angelo to Batesburg, she was under the impression they were going to do a drug deal. (Tr. April 9, p. 302, ll 24-25; p. 303, ll 1-5). She continuously denied any knowledge of the robbery to be done. (Tr. April 9, p. 305, ll. 10-17). This evidence certainly goes to the credibility of the witness and character of the Defendant. It makes an impression on the jury and their judgment of the witness and the Defendant. As such, failure to disclose this evidence under *Brady* and Rule 5 SCRCP deprived the Defendant of a fair trial.

C) Confession of Co-conspirator, Meon Miller

The third piece of evidence, and the most detrimental to the Defendant, was the changed confession of co-conspirator, Meon Miller, that he was the triggerman. Prior to this confession, both Meon and Angelo had denied pulling the trigger. (Tr. April 8, p. 131, ll 13-25; p. 132, ll 1-12). There was *extensive discussion* about the confession during the pre-trial motions and ultimately the judge ruled that the State needed to sit down and discuss the subsequent confession with Mr. O'Neill and that he would postpone opening statements until the following morning. (Tr. April 8, pp. 131-53) (emphasis added). Notably, the Judge stated that if this disclosure had occurred during the trial (as opposed to immediately before

opening statements), that they would have a different problem and that there is *still* a potential harm to the Defendant- which the State also acknowledged. (Tr. April 8, p. 152, ll 17).

Respectfully, I disagree with the trial judge's assessment that postponing the openings until the next morning was an adequate fix. In particular, Mr. O'Neill explained to the trial judge that this new testimony changes his entire trial strategy. (Tr. April 8, p. 134, ll 18-25; p. 135, ll 1-23). Specifically, Mr. O'Neill points out that Meon Miller is the only person the State has who allegedly had personal knowledge that Mr. Cook set up the robbery. (Tr. April 8, p. 137, ll 8-16). As such, his credibility is an essential issue to the defense. (Tr. April 8, p. 137, ll 8-16).

The trial judge justifies his ruling by stating that his credibility is still at issue since there are inconsistent statements. (Tr. April 8, p. 143-44). However, there is much more doubt in the air when you have two possible gunmen pointing the finger at each other than if you have one taking the stand and admitting to shooting the victim. A confession of being the triggerman is very compelling evidence for truthfulness. It gives the impression that he is forthcoming and everything he says is truthful. It gives the impression he wouldn't lie about anything else- like the allegation that Defendant set up the robbery.

Meon Miller was the only witness who testified that Defendant had knowledge of the robbery. (Tr. April 10, pp. 456-59). If you could show he lied about pulling the trigger, a strategy is present to have the jury speculate about what other facts he may be lying about and create reasonable doubt. In summary, this evidence strongly affects the credibility of the witness, which is one of the State's main witnesses. It completely changes the way the Defense would approach the case and prepare for it. Giving the defendant overnight to

change his trial strategy is not adequate time to be able to effectively cross-examine the witness. As a result, Defendant was deprived of a fair trial.

D) Additional Cellphone Information

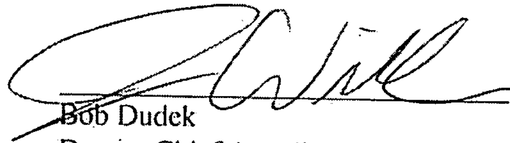
The fourth piece of evidence is the additional cell tower information that was not provided to the Defendant until the second day of the trial, immediately before opening statements were to begin. This information was specifically the addresses of the cellphone numbers that were provided to Defense the day prior to the trial. As previously stated, the cellphone records of the Defendant and co-conspirators was an essential piece of evidence used in the prosecution's case-in-chief. As such, any information relating to those records should have promptly been disclosed to the Defendant. Failure to disclose this information in a timely fashion deprived the Defendant of a fair trial.

Each of these pieces of evidence were material to the Defendant's defense, and thus, were required to promptly be disclosed to the Defendant so that he could effectively cross-examine the witnesses against him and receive a fair trial. Each piece of evidence was individually prejudicial to the case. Moreover, in taking all four in whole, cumulatively, they were detrimental to the defendant in effectively providing a defense, in violation of his due process rights.

CONCLUSION

For the foregoing reasons, Appellant requests that the Court reverse the decision of the trial court, grant the Defendant a new trial, or dismiss the charges against him in their entirety.

Respectfully submitted,



Bob Dudek
Deputy Chief Appellate Defender
Jared C. Williams, Esquire
Lead Counsel for the Appellant

ATTORNEYS FOR APPELLANT.

November 25, 2013

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Lee Alford, Circuit Court Judge

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APPELLATE CASE NO. 2013-000819

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True–billed indictment(s);
(2) Transcript of April 8, 2013 cited in Appellant's Brief;
(3) Opening statements of both parties from Transcript of April 9, 2013;
(4) Transcript of April 9, 2013 cited in Appellant's Brief;
(5) Transcript of April 10, 2013 cited in Appellant's Brief;
(6) Closing arguments of both parties from Transcript April 12, 2013;
(7) Paper document Exhibits

I certify that this designation contains no matter which is irrelevant to this appeal.

November 25, 2013.

Jared C. Williams
Lead Counsel for Appellant

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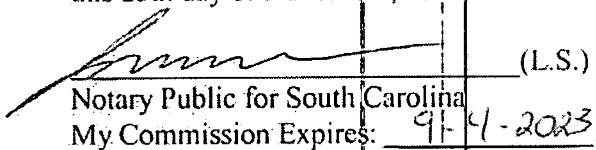
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 25th day of 2013.

JARED C. WILLIAMS
Lead Counsel for the Appellant
BOB DUDEK
Deputy Chief Appellate Defender
ATTORNEYS FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 25th day of November, 2013.



_______________(L.S.)
Notary Public for South Carolina
My Commission Expires: 9-4-2023.