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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge
Trial Court Case No. 2022-CP-42-01677

Appellate Case No. 2026-000952

Taylor Chasey Robertson,

Petitioner,

v.

South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn,

Respondents.

REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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I. ADDRESSING RESPONDENT'S STATEMENT OF THE CASE

Respondents Mischaracterized Petitioner's Position as to "Who" can be Served

Petitioner takes issue with Respondents' characterization of Petitioners' arguments at the August 14, 2023 hearing pertaining to "who" can be served when the entity to be served is a state agency. Specifically, Petitioner believes that Respondents have not accurately described Petitioner's statements and position as to what is and what is not acceptable. Respondents state:

> Plaintiff argued that because Rule 4(d)(5) does not specify a specific employee of every state agency for purposes of accepting service on behalf of the agency, Plaintiff should be permitted to accomplish service on SCDPS by delivering a copy of her Complaint to anyone present at 10311 Wilson Boulevard. ([August 14, 2023 Hearing TRANSCRIPT]. at 8:3-5; 10:2-6, 19-22.)

(Return to Petition for Writ of Certiorari, p. 4)

In order to properly address Respondents' allegations, Petitioner begins by restating the cited sections below, ***with added context in bold italics***. *To wit*:

> ***4(d)(1), 4(d)(3), 4(d)(4), and 4(d)(6) all indicate, you know, a specific type of person that should be receiving service on behalf of that entity that is -- that is to be served, whereas (5) --*** Rule 4(d)(5) just -- it basically says deliver to the agency, and it does not specify any type of person.

R. p. 403, line ***25***, p. 404 lines ***1-2***, 3-5.

> ***[W]ith the other subparts of Rule 4(d) where they specify these -- these types of persons that are allowed to take service,*** why did the legislature not ever specifically note a person in 4(d)(5) to -- to be able to accept service? And I don't know the answer to that, but the fact of the matter is they did not. They simply indicated it should be delivered.
> ***Another point I want to make on [. . .] Rule 4(d)(5) [. . .] service on a state agency has never been addressed by a South Carolina appellate court [. . .], zero case law on it.***

R. p. 405, line ***25***, p. 406, line ***1***, 2-6, ***7-10***

> But going -- but going back to delivery at this address, the -- we have no doubt that this summons and complaint was delivered at that particular address, and this leads into an argument that's been made on sufficient compliance.

R. p. 406, lines 19-22

The point of these statements is NOT to suggest that *anyone* at this address could accept service. It was primarily to illustrate the differences between each subsection of Rule 4(d) in terms of the appropriate person(s) that may be served, depending on the entity. Rules 4(d)(1), (3), (4), and (6) provide some level of specificity and guidance on identifying these people, whereas Rule 4(d)(5) does not. Rule 4(d)(5) simply says "deliver[ ] . . . to such officer or agency", depending on whether the entity sued is a state officer or a state agency. This of course begs the question—why did the legislature not state or provide guidance to identify certain persons within a state agency that could accept service, as it did with individuals, corporations, and even the State of South Carolina? Petitioner does not know the answer, but the fact remains that the legislature did not.

II. ADDRESSING RESPONDENT'S ARGUMENTS

This Case Contains a Novel Question of Law

Even though there are no Appellate Court cases in South Carolina that have involved a review of Rule 4(d)(5), much less in terms of whether or not there was substantial compliance with said rule, Respondents do not believe this case contains a novel question of law. Respondents' position is incorrect.

Petitioner takes specific umbrage with the oddly specific statement that "the absence of a reported decision addressing the precise factual scenario presented here does not transform an ordinary service defect into an issue meriting certiorari." (Return to Petition for Writ of Certiorari, p. 7). This statement is nothing more than a strawman argument. Every case brought before this Court has its own unique factual scenarios. Take discrimination cases for example. Sometimes you have race discrimination cases. Sometimes age discrimination cases. You may have two religious

discrimination cases before the court at the same time. Each case has their own unique set of facts. Nevertheless, this Court, having heard multiple types of these cases, has developed a formula to analyze and make determinations as to these cases. Sure, the Court has heard multiple service of process cases. However, this Court has never heard a case involving Rule 4(d)(5). And Rule 4(d)(5)'s directive to simply "deliver" the summons and complaint to the state officer or agency is open to interpretation, which, again, no appellate court in South Carolina has done.

In terms of interpreting "delivery", say, for example, my buddies, Ben and Gabe, are watching football at my house. I order pizza to my house. The doorbell rings. One of my buddies answers the door, and the Papa Johns delivery guy hands him the pizza. We proceed to enjoy the pizza and the football game. Did Papa Johns not deliver the pizza to me? Obviously service of process of a lawsuit is not the same thing as the delightful cultural pastime that is delivery pizza and football, but the basic premise is the same. Delivery occurred. Should this be sufficient for service of process on a state agency? Given the way the legislature worded the Rule, it should be.

There should be no dispute that the lawsuit was delivered to the address publicly provided by the SCDPS on its own website. But to question whether or not delivery was proper under Rule 4(d)(5) when the process server delivered the lawsuit to the clearly employed-by-someone-in-the-building person sitting at the unmarked desk just inside the entrance to the building located at the address publicly provided by SCDPS is bordering on the line of unfairness and injustice. This is amplified by the fact that SCDPS had notice of and received the lawsuit with enough time to hire counsel (as authorized by the Attorney General's Office [See S.C. Code §§ 1-7-50, 160, 170, and 350]), for counsel to contact Plaintiff's counsel several days prior to the date when the Answer was due, and still have enough time to draft discovery requests to Petitioner dated the same day the Answer was ultimately filed. (R. p. 445-458). Since delivery under Rule 4(d)(5) has not been

analyzed by SC Appellate Courts, there is a novel question of law for this Court to consider.

As an aside, while the proscribed method for service of process upon the Attorney General's office is to send a copy of the lawsuit via certified mail, the mere suggestion that going above and beyond the basic requirements, i.e., hand delivering the lawsuit to the Attorney General's office directly as opposed to sending the lawsuit via the notoriously unreliable US Postal Service, is somehow non-compliant with the Rule is absurd, asinine, and any other adjective used to describe ridiculously outrageous claims.

The SC Court of Appeals Did Not Properly Analyze Petitioner's Service Attempt

Respondents criticizes the cases cited by the Petitioner in support of her position pertaining to substantial compliance, stating,

> Each of those cases involve questions relating to whether a corporate entity was properly served when the Summons and Complaint was delivered to someone associated with that entity. None address attempted service upon a state agency or upon a completely separate entity as occurred in this case.

(Return to Petition for Writ of Certiorari, p. 10)

Petitioner agrees with what Respondents says here. However, agreement with those words in that order is not the point. The point is, those cases involved Rule 4(d) subsections with specific directives by the respective Rule as to what type of person may be served. Of course there is no substantial compliance when service is made upon a receptionist when the Rule says service must be made upon an officer, managing or general agent, or agent authorized by appointment or law to receive service of process. Rule 4(d)(5) does not say who must receive service. Accordingly, Respondents' comparison of the ruling found in the Moore case to the present case (Rule 4(d)(1) vs. Rule 4(d)(5)) is like comparing apples and oranges, and is not applicable. (Return to Petition for Writ of Certiorari, p. 10; Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996)).

Further, Respondents allude to what Appellant has been harping on this entire time—that there are no cases addressing attempted service on a state agency (thus making this a novel question of law).

The SC Court of Appeals Did Not Properly Analyze Petitioner's Service Attempt

Respondents make several questionable statements in their analysis. Respondents argue "there is no evidence that Candace Horton, an employee of SCDMV, was an agent for or could accept service on behalf of SCDPS" and they also note that they presented "unrefuted evidence establishing that Ms. Horton was not authorized to accept service on behalf of SCDPS." (Return to Petition for Writ of Certiorari, p. 11). While Petitioner is not necessarily saying Ms. Horton *can* accept service on behalf of the SCDPS, Petitioner is most certainly saying that, under Rule 4(d)(5) as written, there is nothing to guide who *can* accept service for the SCDPS—or if anyone can for that matter.

Respondents also state "Petitioner attempts to redefine "delivery" under Rule 4(d)(5) to mean delivery to the correct street address, regardless of whether the papers were actually delivered to the agency being sued or to a person authorized to receive them on that agency's behalf." (Return to Petition for Writ of Certiorari, p. 11) Frankly, this comparison makes no sense as Rule 4(d)(5) does not indicate that there are certain persons "authorized" to receive service of process on an agency's behalf.

Respondents further state "[t]he fact that SCDPS and another agency may occupy the same address does not merge them into a single legal entity for service purposes. Service on one agency is not service on another simply because they share a building." (Return to Petition for Writ of Certiorari, p. 11). First of all, given the layout of the building and the lobby area at the SCDPS'

office, shouldn't there be some kind of notice provided to ensure that the desk in the lobby is not affiliated with the SCDPS? Of course, such would be helpful but there is no requirement that they be.

While it is true that the SCDPS and the SCDMV may not *technically* merge into a single legal entity by virtue of occupying the same address, this is akin to how Rule 4(d)(1) operates to perfect service. That is, when the person being served is not home, service is perfected when the papers are left "with some person of suitable age and discretion then residing therein." In this vein, Respondents' suggest that Petitioner's petition would produce an "unworkable rule", effectively allowing delivery to any employee present at a shared government address, regardless of employer and "whether the employee has any authority to receive legal papers on that defendant's behalf." (Return to Petition for Writ of Certiorari, p. 12). While Petitioner understands Respondents' argument, especially in terms of logistics, the fact remains that Rule 4(d)(5) does not say what it does not say. And once again, Respondent's point regarding an employee having "authority" sounds great on paper and in argument, but is completely irrelevant in this discussion based on what the Rule says—or more accurately, what it does not say.

There May Have Never Been a More Blatant Conflation of Rules in SC Jurisprudence than the Trial Court's Conflation of Rules 4(d)(5) and 4(d)(3)

Respondents state that Rules 4(d)(5) and 4(d)(3) were not conflated by the Trial Court or the Respondents. They then attempt to belittle Petitioner's argument as to the same by pointing out that the Court of Appeals does not cite or otherwise address Rule 4(d)(3) in its Opinion. (Return to Petition for Writ of Certiorari, p. 12). Despite the redundancy, Petitioner once again presents the Trial Court's Order, as drafted by the Respondents, and an excerpt of Respondents' Final Brief:

> Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process.

R. p. 8

> To personally serve SCDPS, Plaintiff was required to demonstrate that she delivered the Summons and Complaint to an employee of SCDPS who was authorized to accept such service on behalf of SCDPS.

Final Brief of Respondents, p. 12

As stated umpteen times in some form or fashion throughout this appellate process, these statements are completely not accurate and devoid of any legal authority. We can argue all day long as to whether or not the Rule should say something to that effect, but that is not a discussion that can be had today—not if the goal of this exercise is the pursuit of justice.

Respondent Continues To Mischaracterize Petitioner's Statements

Despite Petitioner arguing throughout the appellate process that delivery was made by delivering the papers to be served to the address publicly provided by the SCDPS, Respondent attempts to twist her words in a manner befitting political ads during election season. Respondent states "Petitioner admits that she did not [deliver a copy of the summons and complaint] in any form or fashion." (Return to Petition for Writ of Certiorari, p. 12). There is really nothing else to say about that.

Service on the Attorney General is of Significant Importance

Respondents argue that because Petitioner served the Attorney General's office directly, that she was non-compliant with the Rule. (Return to Petition for Writ of Certiorari, p. 13).

Petitioner agrees that, in the most technical sense, Respondents are correct. However, it is exactly this type of technical "gotcha" gamesmanship that the Court sought to avoid as it steered towards considering sufficient compliance with the service of process rules. Would this argument hold water if the papers were sent to the Attorney General's office using regular postal snail mail? Absolutely. But to go a step further in ensuring service is perfected by hand delivery, a method much more accurate than the US Postal Service's certified mail system, is head shakingly disappointing.

Of note, Respondents fail to address the importance of ensuring the Attorney General's office has notice of the lawsuit. (See Petition for Writ of Certiorari p. 17-18).

Personal Jurisdiction Was Established in Multiple Ways

Respondents are correct that Petitioners assert that Respondents had actual notice of the suit and suffered no prejudice. I would expect that that would be undisputed by all parties. It is also true that that alone is not sufficient for the court to obtain personal jurisdiction. However, as Petitioner has argued throughout, she asserts that she has sufficiently complied with the Rule so that personal jurisdiction was obtained.

Respondents also argue that the argument of waiving personal jurisdiction was not properly preserved. While Petitioner did not address waiver directly, Respondents argued in their Initial Appellate Brief that "the plaintiff has the burden to establish that the Court has personal jurisdiction over the defendant." (Respondents Initial Brief p. 11, citing *Yarborough and Co. v. Schoolfield Furniture Industries, Inc*., 275 S.C. 151, 268 S.E.2d 42 (1980)). Since Respondents bring this point up in their Reply, Petitioner argues that Respondents opened the door to further analysis and addressed it in her Petition just the same. Petitioners look to the *Wakefield* case, in

which Wakefield appealed the trial court's denial of a directed verdict, but did not raise the issue of whether the State failed to prove beyond a reasonable doubt that he committed the crime he was accused of. *State v. Wakefield*, 323 S.C. 189, 191, 473 S.E.2d 831, 832 (Ct. App. 1996). While the *Wakefield* Court recognized that issues not raised in initial appellate briefs are generally not preserved, the Court also noted that the State addressed the issues in its Return. The Court accordingly chose to address the issues raised by Wakefield in his Reply, despite not being raised in the initial brief.

CONCLUSION

For the reasons stated herein and in her Petition, Petitioner asks this Court to Grant Certiorari on the Questions she has brought before it.

Respectfully submitted,

May 28, 2026

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