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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEANDRE MALCOLM BLACK,

APPELLANT

APPELLATE CASE NO. 2025-000213

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by refusing to grant appellant's motion to enforce the plea offer in his case where his rejection of the offer came before he viewed critical evidence in his case and was conditioned on the waiving of that critical discovery?

STATEMENT OF THE CASE

In July 2023, the Lexington County Grand Jury indicted appellant for trafficking methamphetamine 28 to 100 grams, third offense. R *(Indictment). On January 27, 2025, appellant's case was called to trial before the Honorable Jocelyn Newman and a jury. Tr. 1. Jordan A. Cox and Kyle E. Smith prosecuted the case for the state. Tr. 1. Sarah H. Mauldin and Jean M. Popowski represented appellant. Tr. 1. The jury found appellant guilty as indicted. Tr. 225, l. 22 – 226, l. 1. Judge Newman imposed a sentence of 25 years. Tr. 239, ll. 3-9. Appellant filed a timely notice of appeal. R *(Notice of appeal).

This brief follows.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.*; see also *State v. Brockmeyer*, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred by refusing to grant appellant's motion to enforce the plea offer in his case where his rejection of the offer came before he viewed critical evidence in his case and was conditioned on the waiving of that critical discovery.

Relevant facts

Pretrial hearings

Several pretrial hearings were held in appellant's case before the Honorable Debra R. McCaslin.¹ On May 9, 2024, the state explained that a negotiated 10-year sentence was offered to appellant, but the state was revoking the offer because appellant turned the offer down. (May 9, 2024, Tr. 3, ll. 4-13). The court informed appellant that if he was found guilty at trial he would receive a 25-year sentence, which appellant stated he understood. (May 9, 2024, Tr. 3, ll. 17-25). The court explained that the state was asking to put the rejection on the record meaning the offer would not come back. (May 9, 2024, Tr. 4, ll. 4-10). After a discussion with appellant, the court give him until Monday to consider the offer. (May 9, 2024, Tr. ll. 5, 4-19). The court clarified it was asking the state to extend the plea offer so appellant could speak with his parents. (May 9, 2024, Tr. 5, ll. 20-25).

On May 15, 2024, defense counsel noted that she had watched the confidential informant ("CI") video with the solicitor. (May 15, 2024, Tr. 5, ll. 6-10). Counsel argued that the solicitor provided her with one screenshot from the video but did not turn over others until much later. (May 15, 2024, Tr. 5, ll. 12-15). Counsel explained that she did not have time to review those additional screenshots with her client. (May 15, 2024, Tr. 5, ll. 15-18). She also asserted that

¹ Aside from the hearings described below, it appears that a status conference occurred on May 31, 2024, where the state and defense appeared before Judge McCaslin. Despite requesting this transcript, court administration advised that a court reporter was not present for the May 31, 2024, status conference.

the solicitor received significant, and damaging, evidence concerning appellant's admissions. (May 15, 2024, Tr. 5, ll. 21-25). She argued had appellant had a chance to review it may have convinced him that he needed to take the deal. (May 15, 2024, Tr. 6, ll. 1-2). She argued that discovery had to be turned over 45 days before and the discovery at issue was the "kind of thing that somebody needs to know about when they are a making a decision whether to plead or not." (May 15, 2024, Tr. 6, ll. 3-8). She argued that appellant needed to be able to make an informed decision. (May 15, 2024, Tr. 6, ll. 17-19). Counsel asked for more time for appellant to consider the offer in light of the new discovery. (May 15, 2024, Tr. 6, ll. 20-24). The state clarified that what was given to defense counsel yesterday was a 2.5 paragraph supplemental report from an interview of law enforcement after appellant's arrest. (May 15, 2024, Tr. 7, ll. 3-11). The state noted that it would not withdraw the 10-year offer. (May 15, 2024, Tr. 8, ll. 1-5). The court stated, "We need to get him over here. Let him watch it and read the two paragraphs, and look at the photos." (May 15, 2025, Tr. 10, ll. 3-4).

On May 23, 2024, appellant stated he wanted to hire a private attorney. (May 23, 2024, Tr. 6, ll. 11-19). The court stated it would not relieve defense counsel and explained that appellant was set for trial on June 3, 2024. (May 23, 2024, Tr. 6, l. 24 – 7, l. 2.). The court stated it would give appellant until the end of the day as to consider the offer. (May 23, 2024, Tr. 7, ll. 17-18). After a recess, appellant stated that he was not taking the offer, but he would keep defense counsel. (May 23, 2024, Tr. 7, l. 20 – 8, l. 3). The court explained that once appellant left the courtroom, the deal was off, and appellant stated he was positive in his rejection of the offer. (May 24, 2024, Tr. 9, ll. 18-25).

On June 6, 2024, the court reiterated that the offer was a negotiated 10 years at 85 percent time, meaning he would serve about 8 years as well as credit for the approximate 1-year he spent

in pretrial detention. (June 6, 2024, Tr. 3, ll. 17-25). The court asked defense counsel to place the CI motion on the record. (June 6, 2024, Tr. 4, ll. 9-10). Counsel explained she filed a motion to reveal the name of the CI, videos related to the buys, the agreement with law enforcement and the CI, and several items related to the CI herself. (June 6, 2024, Tr. 4, ll. 11-17). Counsel explained that she filed a discovery motion on June 12, 2023, several separate motions for information on the deal and the CIs name, and asked the solicitor to provide everything on May 24, 2024, which he declined to do. (June 6, 2024, Tr. 5, ll. 11-10).

Defense counsel further explained that at a May 31, 2024, status conference she asked again for information related to the CI, at which time the state provided a “redacted rap sheet.” (June 6, 2024, Tr. 5, ll. 20-25). She argued that she still did not have dates of the agreement, what the terms were for the CI, or the timespan the agreement covered, and moved for that information under Rule 5. (June 6, 2024, Tr. 6, ll. 1-11). Counsel cited an order from Judge Addy addressing concerns with CI cases and discovery, which was entered as Court’s Exhibit 1. (June 6, 2024, Tr. 7, ll. 20-25); *see also* R. *(Court’s Exhibit 1). She argued that concealing this evidence prevented the defendant from evaluating the case against him. (June 6, 2024, Tr. 8, ll. 20-24). She asserted that they were entitled to information concerning the CI as they needed time to prepare, investigate the person, and appellant needed a chance to see the videos, so he was not required to rely only on counsel’s word. (June 6, 2024, Tr. 10, l. 20 – 11, l. 4).

The state responded that the CI was a material witness in both cases: the buy and case involving a search warrant. (June 6, 2024, Tr. 11, l. 14 – 12, l. 15). Defense counsel noted that the CI was more than a mere tipster. (June 6, 2024, Tr. 12, ll. 16-18). The state continued that the buy was recorded, and defense counsel was able to view the video. (June 6, 2024, Tr. 12, ll. 22-25). The state confirmed that appellant did not view the video because turning over the

videos revealed the identity of the CI. (June 6, 2024, Tr. 12, l. 25 – 13, l. 2). The court noted that this case involved threats to the CI, which concerned the court. (June 6, 2024, Tr. 13, ll. 3-6). The state explained that it turned over a redacted rap sheet with redacted warrant numbers to protect the identity of the CI. (June 6, 2024, Tr. 14, ll. 10-15). The state noted that the court indicated in the status conference that the CI identity would be revealed so the state decided to try the controlled buy case rather than the search warrant case. (June 6, 2024, Tr. 15, l. 1-14). The court confirmed that it would rule that the identity of the CI be revealed. (June 6, 2024, Tr. 15, ll. 15). Concerning the video, the court inquired whether the CI could be redacted out so the video could be turned over. (June 6, 2024, Tr. 16, ll. 18-20). The court further advised the state to see if the video could be redacted and turned over. (June 6, 2024, Tr. 17, ll. 13-14).

Counsel continued that as to the agreement, she did not know the terms the CI agreed to and could only infer that charges were dismissed for certain conduct. (June 6, 2024, Tr. 17, ll. 16-24). The state explained that it had turned over a redacted disposition sheet with the name, warrant number, and date associated related to the CI. (June 6, 2024, Tr. 18, ll. 3-8). The state confirmed that dismissal was because of cooperation. (June 6, 2024, Tr. 18, ll. 10-16). The state also agreed it would provide information requested about the cooperation agreements for the CI. (June 6, 2024, Tr. 19, ll. 16-23). The court then explained, as to revealing the identity of the CI, “there’s a reason I’m not gonna do it until the moment a jury is picked and that’s because threats have been made against this CI period, and that’s this Court’s concern. I think we all agree that the CI is material and needs to be turned over.” (June 6, 2024, Tr. 20, ll. 18-24). The state agreed. (June 6, 2024, Tr. 20, l. 25). The court continued, “The minute this jury is picked, I want it turned over so she can get her investigator going. If I’ve got to stop and start the trial a day later or whatever, I’m going to give her . . . ample time.” (June 6, 2024, Tr. 21, ll. 1-7).

Defense counsel contended that they were entitled to the information and time to investigate. (June 6, 2024, Tr. 21, ll. 16-20). The court stated that it would not give defense counsel the information two months in advance when there have been threats related to the CI. (June 6, 2024, Tr. 21, l. 21 – 22, l. 1). The court continued that it believed it was too dangerous and did not believe that appellant would be prejudiced if the material was given to him once the court knew he was going to trial. (June 6, 2024, Tr. 22, ll. 1-8). The court reiterated that it did not want the identity of the CI revealed until the jury was picked but instructed the state to turn over everything it had, including the video, with redactions. (June 6, 2024, Tr. 22, ll. 18-22). The court instructed that the CIs face should be redacted from the videos. (June 6, 2024, Tr. 23, ll. 3-4). The state explained it would try to redact the video but would come to the court if the state was too concerned about revealing the identity of the CI. (June 6, 2024, Tr. 24, ll. 1-9).

Pretrial arguments concerning the CI video

Prior to trial, defense counsel moved to enforce the plea agreement which was to plead guilty to trafficking for a negotiated ten years. Tr. 64, ll. 4-6. Counsel argued that appellant was not able to view the evidence while the offer was open. Tr. 64, ll. 12-14. She noted that appellant was able to view some stills from the video and hear counsel's description of the video, "but those things are very different from a person being able to sit and watch a video that allegedly depicts his own behavior and the behavior of somebody else and to see step by step as this goes." Tr. 64, ll. 14-19. She argued that appellant was not able to appreciate the situation until he was able to view the video himself long after the plea offer had expired. Tr. 64, ll. 22-24. She pointed to a memorandum from former Chief Justice Toal condemning solicitors for conditioning plea offers upon foregoing discovery.² Tr. 65, ll. 1-4.

² Memorandum from C.J. Jean Hoefer Toal on Plea Agreements and Discovery (Mar. 1, 2004).

Counsel argued that appellant had to give up the opportunity to enter a plea without being able to see the video, which clearly changed his mind. Tr. 65, ll. 4-11. Counsel further argued that if a description and still shots were sufficient to evaluate evidence against someone, “then why isn’t the State presenting only the still shots from the video in the case?” Tr. 65, ll. 16-24. Counsel acknowledged that this issue had come up in the post-conviction relief (PCR) context and clarified that she was not alleging a *Brady*³ violation. Tr. 66, ll. 1-2. Instead, counsel argued that not being able to make an informed decision about a guilty plea violated appellant’s rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as well as Article 1 Sections 3 and 14 of the South Carolina Constitution. Tr. 66, ll. 3-8. She asserted that appellant had the right to present a complete defense and to have competent counsel, and thus, she requested that the court required the state to extend the prior offer. Tr. 66, ll. 8-12. She reiterated that appellant stated on a jail call that he would enter a guilty plea if the offer were extended again, which was not the case before he saw the video. Tr. 66, ll. 13-16.

The state responded that the video of the controlled buy from April 12, 2023, was disclosed to defense counsel on March 6, 2024. Tr. 66, ll. 18-24. The state noted that counsel watched the video in full, and thus, disclosure of the existence of contents of the video had been completed in March 2024. Tr. 66, l. 25 – 67, l. 4. The state argued that the identity of the CI was withheld because it believed the identity would be readily apparent from the video and they did not want appellant to be able to identify the CI until absolutely necessary. Tr. 67, ll. 5-10. The state argued it had provided still shots from the video to try to provide relevant information. Tr. 67, ll. 15-25. The state contended it would not re-extend the plea offer. Tr. 68, ll. 3-12. The state argued that the offer was not conditioned on waiving discovery by appellant. Tr. 68, ll. 12-

³ *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963).

13. The state noted that it had not extended a new offer since the rejection of the 10-year offer from May of the prior year. Tr. 69, ll. 4-5.

Defense counsel responded that appellant, not counsel, had to make the decision about the plea offer. Tr. 69, ll. 22-25. She argued that “it doesn’t matter how many times I’ve seen it, that’s very different from a person seeing a video with his own eyes.” Tr. 69, l. 25 – 70, l. 2. She asserted the video was of the kind that had appellant seen the video earlier, she believed he would have made a different decision. Tr. 70, ll. 4-6. She argued that the effect was that the offer was conditioned on giving up the discovery since appellant had to decide about the plea offer before he could see a critical piece of the evidence in his case. Tr. 70, l. 22 – 71, l. 2.

The trial court then ruled,

Based on the circumstances here, I cannot find that the plea offer was conditioned on foregoing some portion of discovery. He did have still shots. Frankly, a video is just a series of stills put together. Yeah, it wasn’t completely withheld from the defense and, frankly, this is a matter that Judge McCaslin has already decided with the timeline for the disclosure of the video and the identity of the confidential information, but certainly the plea offer wasn’t conditioned on foregoing, you know, receipt of the identity of the CI or seeing the video. Counsel saw the video, there were still images, and the State has maintained throughout the prosecution of this case that the defendant is not entitled to the identity of the CI until absolutely necessary, and I understand that that was the State’s position even in the hearing – motion hearing with Judge McCaslin where she ordered that the video be disclosed with, I guess, two days’ notice – two days in advance of trial, and in fact, in this situation there’s been more time that’s passed. Obviously the plea offer was no longer on the table and he’s not entitled to a plea offer. So – so as to the motion to enforce the plea offer, that is also respectfully denied.

Tr. 71, l. 23 – 72, l. 21.

Trial

During trial, investigator Austin Sanner testified about how CIs are used in narcotics investigations. Tr. 103, ll. 5-23. He explained that CIs were paid but were not employees of the Sheriff's Department. Tr. 103, ll. 22-24. He testified that a CI was used in the investigation of appellant's case. Tr. 105, ll. 15-17. He testified that a CI completed a controlled purchase on April 12, 2023. Tr. 105, ll. 18-24. He testified that he was the CIs handler. Tr. 106, ll. 8-12. The CI had prior charges, and she worked as a CI for consideration against those charges. Tr. 107, ll. 2-13. He described the process of setting up a CI to complete a controlled buy. Tr. 108, l. 23 – 109, l. 23. Officers monitored the controlled purchase and observed what they believed to be appellant selling methamphetamine to the CI. Tr. 109, l. 23 – 110, l. 3. He testified that after the purchase, he met up with the CI who was searched. Tr. 110, ll. 15-22. The suspected methamphetamine was transported to the Lexington County Sheriff's Department narcotics office for testing and storage. Tr. 111, ll. 15-21. Sanner also testified that he located a jail call from the detention center which was identified as State's Exhibit 2. Tr. 116, ll. 1-25. On cross-examination, Sanner agreed that the CI had worked for the department from 2017 through 2023 and had received approximately \$8,000 over eight years. Tr. 130, l. 7 – 132, l. 23.

The CI then testified that she had known appellant for about twenty years. Tr. 142, ll. 17-25. She testified that in April of 2023 she was working with Agent Sanner to buy drugs from certain people. Tr. 144, ll. 2-14. She explained that for the April 2023 buy she contacted appellant about buying some drugs and followed through with going to purchase those drugs. Tr. 147, ll. 13-18. Sanner gave her a device to record the buy. Tr. 147, ll. 21-25. State's Exhibit 3, a video of the controlled buy, was entered into evidence. Tr. 148, l. 24 – 149, l. 4. The state

then played the controlled purchase video and the CI testified concerning what was happening in the video. Tr. 149, l. 9 – 153, l. 23.

Margaret Walker, a chemist for Lexington County Sheriff's Department and expert in drug analysis, testified that the substance she tested was methamphetamine weighing 28.03 grams. Tr. 173, l. 12 – 175, l. 16. The state also called Paula Hare, a lieutenant for the Lexington County Sheriff's Department in the detention center, who testified that she reviewed a phone call in this case. Tr. 181, ll. 2-5. The state entered State's Exhibit 2 into evidence. Tr. 182, ll. 3-9. The state played the call for the jury. Tr. 182, l. 22. On the call, appellant can be heard saying he went to court to pick his jury and that he saw the video. (State's Exhibit 2). He acknowledged that on the video you could see all kinds of stuff like a gun, drugs, and money. (State's Exhibit 2). Appellant stated it was definitely a clear video. (State's Exhibit 2).

The jury ultimately found appellant guilty as indicted. Tr. 225, l. 22 – 226, l. 1. The trial court imposed a sentence of 25-years imprisonment with credit for 623 days' time served. Tr. 239, ll. 3-9.

Discussion

The Due Process Clause of the United States Constitution provides, “No State shall ... deprive any person of life, liberty, or property, without due process of law” U.S. Const. amend. XIV, § 1. Similarly, the due process clause of the South Carolina Constitution provides that no person “shall . . . be deprived of life, liberty, or property without due process of law.” S.C. Const. art. I, § 3. The clause provides both procedural and substantive due process protections.

Due Process is violated when a party is denied fundamental fairness. *Wilson v. S.C. Department of Motor Vehicles*, 419 S.C. 203, 206, 796 S.E.2d 541, 542 (Ct. App. 2017). Specifically, “[a] denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.” *State v. Beaty*, 423 S.C. 26, 44, 813 S.E.2d 502, 511 (2018) (citing *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997)); see also *State v. Hutton*, 358 S.C. 622, 595 S.E.2d 876 (Ct. App. 2004) (“Pursuant to the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness.”); *California v. Trombetta*, 467 U.S. 479, 484, 104 S. Ct. 2528, 2532 (1984) (“We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense.”).

While South Carolina courts have addressed a criminal defendant’s right to view a controlled buy between a defendant and a CI, these cases have arisen in the post-conviction relief context and pertain to claimed *Brady* violations. See e.g., *Hines v. State*, 435 S.C. 476, 868 S.E.2d 387 (Ct. App. 2021), cert. granted *Hines v. State*, 443 S.C. 32, 902 S.E.2d 337 (2024).⁴

⁴ Hines’s petition for certiorari was granted only as to his argument that the Court of Appeals erred in finding his waiver of counsel and ensuing guilty plea voluntary. See *Hines*, 443 S.C. at

Specifically, in *Hines*, petitioner argued to the South Carolina Court of Appeals that the PCR court erred by failing to find that the state committed prosecutorial misconduct by refusing to show petitioner the video unless he proceeded to trial. 435 S.C. at 486-87, 868 S.E.2d at 392. The Court of Appeals affirmed the PCR court's denial of relief as to petitioner's prosecutorial misconduct claim because he failed to show the state violated *Brady* by prohibiting him to view the video. *Id.* at 490, 868 S.E.2d at 394. The Court explained that evidence did not support that the video was exculpatory such that the video was not favorable to petitioner and did not implicate *Brady*. *Id.* at 491, 868 S.E.2d at 394. The Court also noted that the state allowed petitioner's attorney to view the video, and thus, the state did not refuse to disclose the evidence. *Id.* at 491, 868 S.E.2d at 394-95.

Moreover, former Chief Justice Toal of the South Carolina Supreme Court, addressed the issues of plea agreements and discovery in a March 1, 2004, memorandum addressed to all solicitors. *See* Memorandum from C.J. Jean Hoefer Toal on Plea Agreements and Discovery (Mar. 1, 2004). There, Chief Justice Toal explained that she had become aware that solicitors were offering plea agreements to defendants on the condition that they forego discovery. *Id.* Chief Justice Toal advised that this practice would have adverse consequences as it related to post-conviction relief claims as to the voluntariness of the plea because the applicant lacked access to the solicitor's file. *Id.* In addition, Chief Justice Toal explained that she believed it was "unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases." *Id.* (citing Rule 3.4, RLDE; Rule 407, SCACR). To that end, Chief Justice Toal formally requested that solicitors who were pursuing that practice to stop immediately. *Id.*

36, 902 S.E.2d at 378. Our Supreme Court denied certiorari as to the discovery issues. *Id.* at 443 S.C. at 36, 902 S.E.2d at 379.

Concerning the disclosure of informants, “[a]lthough the State is generally privileged from revealing the name of a confidential informant, disclosure may be required when the informant’s identity is relevant and helpful to the defense or is essential for a fair determination of the State’s case against the accused.” *State v. Humphries*, 354 S.C. 87, 90, 579 S.E.2d 613, 614-15 (2003) (citing *State v. Shupper*, 263 S.C. 53, 207 S.E.2d 799 (1974)). “For instance, if the informant is an active participant in the criminal transaction and/or a material witness on the issue of guilt or innocence, disclosure of his identity may be required depending upon the facts and circumstances.” *Id.* (citing *State v. Burney*, 294 S.C. 61, 362 S.E.2d 635 (1987); *State v. Diamond*, 280 S.C. 296, 312 S.E.2d 550 (1984); *State v. Batson*, 261 S.C. 128, 198 S.E.2d 517 (1973)). Moreover, “in cases involving a confidential informant, a criminal defendant’s interest in access to certain evidence must be weighed against the State’s interest in protecting the identity and safety of the informant.” *Hines*, 435 S.C. at 489, 868 S.E.2d at 393 (citing *Humphries*, 354 S.C. at 90, 579 S.E.2d at 614-15).

The trial court erred by refusing to grant appellant’s motion to enforce the plea agreement because appellant was unable to make an informed decision concerning whether to accept a guilty plea or proceed to trial where he was deprived of the opportunity to view critical evidence in his case. Importantly, for a guilty plea to be valid it must be entered into knowingly, voluntarily, and intelligently. *See Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969) (explaining that the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently). Appellant did not have the opportunity to make an informed decision about whether to plead guilty as he was required to weigh his offer without viewing the controlled buy video that the state’s case against him hinged upon. Tr. 64, ll. 12-14, 22-24; R *(State’s Exhibit 3); Tr. 149, l. 9 – 153, l. 23. The effect was that the state conditioned its offer

in appellant's case on his foregoing of viewing critical discovery. *See* Memorandum from C.J. Jean Hoefer Toal on Plea Agreements and Discovery (Mar. 1, 2004). Such a practice has been condemned by former Chief Justice Toal as unethical and cautioned against because the practice could create adverse consequences in future post-conviction relief proceedings. *See id.* While the state asserted below that it did not condition its offer on appellant foregoing discovery, *see* Tr. 68, ll. 12-13, the state's refusal to allow appellant to view the video and the trial court's denial of appellant's motion to enforce the plea agreement once appellant had viewed the video created an offer that could only be accepted without appellant viewing the controlled buy video.

The record also supports that had appellant seen the video earlier, it is likely he would have made a different decision with all of the necessary information before him given that on a recorded jail call appellant remarked about the clarity of the video and what could be seen on it. *See* R *(State's Exhibit 2). Even further, the mere fact that appellant's counsel reviewed the video is of no consequence. Tr. 69, l. 22 – 70, l. 2. The decision whether or not to enter a guilty plea was solely appellants. *See Moore v. State*, 399 S.C. 641, 732 S.E.2d 871, 873 (2012) (“A defendant has the ultimate authority to determine whether to plead guilty, waive a jury, testify on his own behalf, or take an appeal.”) (internal quotations and alterations omitted). While counsel was able to relay to appellant her description of the video and the state provided a few still images, the fact remains that appellant was deprived of the opportunity to review critical evidence that the state had readily in its possession as defense counsel was permitted to view the video on March 6, 2024, several months before the state withdrew its plea offer. Tr. 66, ll. 18-24; (June 6, 2024, Tr. 12, ll. 22-25). Moreover, the parties agreed that the CI utilized in this case rose above the level of a mere tipster and actively participated in the drug transaction. (June 6,

2024, Tr. 11, l. 14 – 12, l. 18; Tr. 20, ll. 18-25).⁵ Although the hearing judge ruled that disclosure of the CIs identity was not to occur until a jury was picked, *see* (June 6, 2024, Tr. 21, ll. 1-7; Tr. 22, ll. 18-22), appellant was unable to make an informed decision about the state's offer until he viewed the video of the controlled buy. Therefore, the trial court erred by refusing to grant appellant's motion to enforce the plea offer where the offer was conditioned on appellant foregoing critical discovery. Tr. 71, l. 23 – 72, l. 21.

In addition, as a matter of fundamental fairness, it is necessary to allow criminal defendants to view critical evidence before they decide whether they would like to accept the state's plea offer or enforce their right to a jury trial. *Wilson*, 419 S.C. at 206, 796 S.E.2d at 542; *Beatty*, 423 S.C. at 44, 813 S.E.2d at 511. As discussed, the decision to enter a guilty plea is solely that of a criminal defendant, *Moore*, 399 S.C. at 641, 732 S.E.2d at 873, and because of this it is crucial that appellant view the evidence upon which the state's case against him is based so that he may make an intelligent decision. Appellant's due process rights were thus violated because he was deprived of the opportunity to make an informed decision about his plea offer. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. It was fundamentally unfair for the trial court to refuse to enforce the plea agreement where the state conditioned acceptance on appellant foregoing review of the controlled buy video. Tr. 71, l. 23 – 72, l. 21. Likewise, the state's procedure in refusing to allow appellant to view the video while the offer remained open resulted in a plea agreement conditioned upon appellant foregoing discovery. Even further, the procedure requiring appellant to make an uninformed decision created a situation where appellant either

⁵ Notably, it is unclear from the record why a redacted version of the controlled buy video was unable to be produced. During a pretrial hearing on June 6, 2024, Judge McCaslin specifically requested for the State to try to redact the video to allow appellant to view the video, but it does not appear that a redacted version of the video was ever created so that appellant could view the controlled buy video while the plea offer remained open. *See* (June 6, 2024, Tr. 16, ll. 18-20; Tr. 17, ll. 13-14); Tr. 22, ll. 18-22).

must waive his constitutional right to a jury trial so that he may accept the plea offer (without reviewing the controlled buy video) or reject the plea offer to ensure he may review the critical discovery. Such practice is fundamentally unfair and deprives appellant of due process.

Accordingly, the trial court erred by finding that the plea offer was not conditioned on foregoing a portion of discovery and ultimately denying appellant's motion to enforce the plea offer where the state's procedure denied appellant's due process rights, was fundamentally unfair, and deprived appellant the opportunity to make an informed decision about the plea offer. Tr. 71, l. 23 – 72, l. 21.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests that this Court reverse his conviction and sentence and remand to the Court of General Sessions of Lexington County for a new trial.



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Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of June, 2026.