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Aug 14 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Christopher D. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONQUAVIS McCONNELL,

APPELLANT

APPELLATE CASE NO. 2026-000112

ANDERS BRIEF OF APPELLANT

GARY H JOHNSON
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in restricting cross-examination of the State's key witness concerning his pending criminal charges in South Carolina when his credibility as a confidential informant testifying on behalf of the State was critical to conviction?

STATEMENT OF THE CASE

Appellant was indicted by a York County grand jury for distribution of fentanyl in violation of S.C. Code Ann. §44-53-370 arising out of "controlled buy" using a confidential informant on July 18, 2024. R. 378-379. A few weeks before trial, the State provided notice pursuant to S.C. Code Ann. § 17-25-45 asserting imprisonment for life without the possibility of parole as the appropriate sentence upon conviction. The case was tried before the Honorable Christopher D. Taylor and a jury on January 5th and 6th, 2026. R. 1. Melissa Rigers and Fred Davis represented Appellant and Heather Burdette and Marina Hamilton appeared on behalf of the State. The jury convicted Appellant as indicted. R. 324, l. 24 – 325, l. 4. Judge Taylor sentenced Appellant to life under the provisions of S.C. Code Ann. § 17-25-45. R. 380.

This Appeal 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. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (internal citations omitted).

ARGUMENT

The trial court abused its discretion in restricting cross-examination of the State's key witness concerning his pending criminal charges in South Carolina and his legal problems arising out North Carolina when his credibility as a confidential informant testifying on behalf of the State was critical to conviction.

A. How the matter was raised at trial.

The State's case centered around a controlled buy of a substance by its confidential informant, Kendrick McIlwain. R. 162, l. 22 – 163, l. 12. McIlwain claimed to have known Appellant for approximately six months prior to the controlled buy. R. 163, l. 8 – 164, l. 13. McIlwain carried an extensive criminal history to the stand. The State successfully argued that certain aspects of that history should be exempt from cross-examination. Specifically, the State argued that *pending* criminal charges in Lancaster County for armed robbery and possession of a deadly weapon and probation violations for McIlwain's manslaughter conviction in North Carolina should be excluded. R. 139, l. 10 – 143, l. 10. After the lower court ruled in favor of the State, Appellant's counsel asked for clarification regarding the Lancaster County charges.

MS. ROGERS: Okay. And as to the armed robbery, it -- yeah, I would just like, if possible, a finding on the record as to why.

I know you said a little bit about it, it being improper to question him about that. I didn't want to ask him too much about it. Just bring up that he has that and that he's facing a ton of time on the armed robbery as well and I don't know if I spoke much on this yesterday.

THE COURT: uh-huh. (Affirmative).

MS. ROGERS: But the, the State mentioned that it would be -- they want me to bring up the armed robbery because it'd be prejudicial to the C.I. He's not on trial today and the standard is not whether it's prejudicial to the C.I. It definitely goes to his bias and his motivation to lie. They may not have offered him any kind of

deal. They can say that until they're blue in the face to be honest with you. However, that doesn't mean that he's not hoping that they'll also help him out with a charge that carries up to 30 years.

I mean it's been pending since 2021. He still has that over his head, Your Honor.

R. 147, l. 20 – 148, l. 16.

Appellant's counsel asserted that Rule 608(c), SCRE, was applicable since it showed motive to misrepresent and bias. R. 149, ll. 7 – 25. The State responded by claiming that pending charges were excluded and they were voluntarily bringing up the York County charges:

And, under 608(c) or 608(b) or 608 at all, *you can't prove -- you can't bring up a pending case*. I don't believe that they would even be able to bring up the York County charges if we weren't gonna bring them up and agree that it's biased. But a Lancaster charge that was pending three years before this incident is not relevant and there is nothing to -- for that charge to go with a York County case that we're here for today.

R. 151, ll. 15 – 22 (emphasis added). The trial court ruled in favor of the State's position. R. 153, ll. 9 – 10 156, ll. 2 – 6. Confusingly, the trial court couched the ruling as "preliminary" but clarified the ruling was final.

And, initially, to make y'all more confused, initially I had said I preliminarily denied the motion because I haven't heard Mr. McIlwain's testimony yet and I don't know exactly how that will play out.

But for the reasons that were cited by the State, at this time I'll deny, whether it's a motion or an explanation as to what y'all can get into on cross-examination, *I'll deny your request at this time and make this determination at this time*.

R. 155, l. 23 – 156, l. 6.¹

¹ In addition, McIlwain was the next witness called to testify, further preserving this issue for appellate review. There is an exception to this general rule requiring renewal of an objection when a ruling on the motion is made "immediately prior to the introduction of the evidence in question." State v. Kromah, 401 S.C. 340, 353, 737 S.E.2d 490, 497 (2013).

B. How the trial court erred.

The State's position below, adopted by the trial court, that there was no right to cross-examine a witness regarding pending charges is contrary to settled law. *See State v. Williams*, 432 S.C. 515, 524, 854 S.E.2d 166, 170 (Ct. App. 2021) ("Here, the circuit court erred in limiting Williams's cross-examination of Devoe because Devoe's potential sentencing exposure on his pending charges impacted his potential bias and motive for testifying."). As noted by our Supreme Court:

Because of the number of charges pending against Peterson and the severity of the potential sentences, we find the evidence was probative on the issue of bias and should have been admitted. There was the substantial possibility Peterson would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case. The excluded evidence had "a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity" of Peterson's testimony, *State v. Jones*, *supra*. Therefore, under these circumstances, we find the trial court committed error under Rule 608(c) by improperly limiting the scope of appellant's cross-examination.

State v. Sims, 348 S.C. 16, 25–26, 558 S.E.2d 518, 523 (2002)

The State's argument below that the location of the charges (Lancaster rather than York County) and the fact that the State was not voluntarily bringing up the matter made them inadmissible was against clearly established law. As our Supreme Court noted in Sims, pending charges and the implication that the State will provide a witness with some assistance on those charges is powerful impeachment evidence under Rule 608(c), SCRE. The trial court committed error in limiting Appellant's cross-examination on the pending significant charges he faced in Lancaster County.

C. Prejudice.

The State relied upon McIlwain to identify Appellant as the source of the alleged drug buy. McIlwain was the only witness who knew Appellant from any other source than the undercover buy video. R. 163, ll. 1 – 18. McIlwain was "searched" before and after the alleged drug transaction, but the full scope and extent of those searches, both of his person and his vehicle, were disputed. R. 172, ll. 2-20. Officers described the searches as "very thorough." R. 194, ll. 1 – 22. However, the officers failed to video any of these alleged thorough searches despite clearly being capable of documenting the "thorough" nature of the search to verify McIlwain did not have any access to narcotics during the period he was alone inside his own vehicle both before and after the alleged buy. R. 201, l. 23 – 202, l. 9.

Typically, cases that rely upon the credibility of a critical witness do not lend themselves to harmless error analysis. *See State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94–95 (2011) ("The only evidence presented by the State was the children's accounts of what occurred and other hearsay evidence of the children's accounts. Because the children's credibility was the most critical determination of this case, we find the admission of the [forensic interviewer's] written reports was not harmless."). However, improper limitation on impeachment would be subject to a harmless error analysis. The Supreme Court has provided guidance in evaluating a finding of harmless error in this context:

The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points,

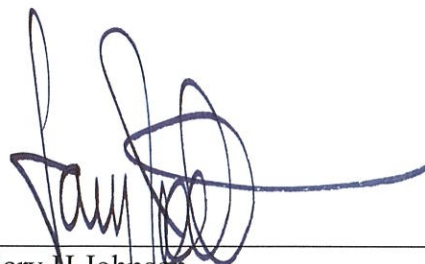
the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986).

Here, the testimony of McIlwain and his credibility that he did nothing to change or alter the substance he received on video was critical to the State's case. The evidence was not cumulative. While Appellant was able to cross-examine McIlwain on pending drug charges in York County, he was facing violent charges in Lancaster County that carried significant prison sentences for which he was improperly insulated. Since the State's case against Appellant rested on the credibility of McIlwain, this Court should not find the error harmless beyond a reasonable doubt.

CONCLUSION

This Court should reverse Appellant's conviction and remand this matter for a new trial.

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", written over a horizontal line.

Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of August, 2026.

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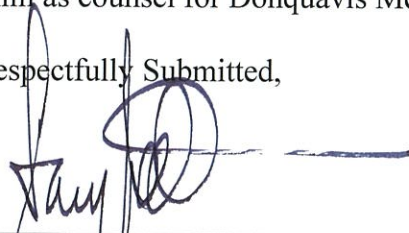
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Donquavis McConnell states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Christopher D. Taylor, which was held on January 5-6, 2026, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Donquavis McConnell.

Respectfully Submitted,



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

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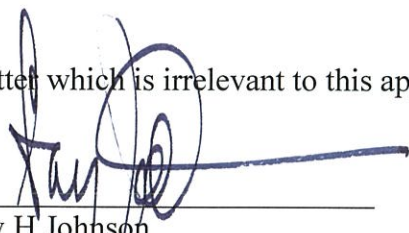
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript dated January 5-6, 2026
- (2) Court's Exhibit No. 1 (Email)
- (3) Court's Exhibit No. 2 (Logsheet from jail)
- (4) State's Exhibit No. 1 (Flash Drive – Buy Video)
- (5) Indictment
- (6) Sentence Sheet

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



Gary H Johnson
Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Donquavis McConnell, #347715, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29210, this 14th day of August, 2026.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT