

The State of South Carolina
In The Court of Appeals

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Appeal From Chester County
Court of General Sessions
The Honorable Clifton Newman SC Court of Appeals

Appellate Case No.: 2026-000715
Trial Court Case NO.: 2024-GS-12-00560
2024-GS-12-00561

State of South Carolina, Respondent
v.
Phillip D. Newberry, Appellant

Brief in Support of Motion(s)

In addition to the issues raised in the appellants motion for a new trial appellant files this brief in support, which includes aspects of issue 10 in appellants Statement of Issues on appeal, but is centered mostly around issue 9. None of the parties subpoenaed brought any of the materials requested, and Special Agent G. Harrison of the FBI was not present at anytime during trial. When these facts are combined with issue 9 it is apparent that rudimentary demands of justice have not been met and appellants motion for a new trial is justified. Not only was the evidence at hand requested by bona fide Subpoena, it was compelled by oral motion granted by the trial Court judge, and was documented by the government in investigation report(s) provided by both Counsel, and by the States Prosecutors (pro se) during discovery.

"A Brady violation occurs when the government fails to disclose evidence materially favorable to the accused see 373 U.S., at 87, 83 S.Ct. 1194. This Court has held that the Brady duty extends to impeachment evidence as well as exculpatory evidence United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87-L.Ed.2d 481 (1985) and Brady suppression occurs when the government fails to turn over evidence that is "known only to police, investigators, and not the prosecutor." Kyles, 514 U.S., at 438, 115 S.Ct. 1555 see id., at 437, 115 S.Ct. 1555 ("The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the governments behalf in the case, including the police")

"Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Strickler v. Greene*, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (quoting *Bagley*, *Supra*, at 682, 105 S.Ct. 3375 (opinion of Blackmun, J.)), although a "showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles*, 514 U.S. at 434, 115 S.Ct. 1555. The reversal of a conviction is required upon a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the confidence in the verdict." *Id.* at 435, 115 S.Ct. 1555. *Youngblood v. West Virginia*, 547 U.S. 867 (2006).

Although the State "disclosed" this particular evidence, it failed at its Brady duty by failing to turn over the evidence, specifically when it failed to turn it over when compelled. This evidence is both exculpatory and impeachment evidence as the credibility of the State's case would be questioned by a jury should the facts come to light, especially when an allegation of a violation of 16-5-16 is alleged in conjunction with fraud allegations and second amendment issues are being raised in a Safe Haven State. It also failed to disclose any evidence pertaining to what investigative tactics were used absent a warrant, or the unlawful use of healthcare information (which was discussed in court) to make decisions, including appellant's FBI file, which had been requested in good faith for trial. In addition to not disclosing relevant information from the FBI which appellant asserts would have reasonably led to a different outcome in the proceeding as the content in the video would give rise to a mens rea defense like "outrage." The State failed at its Brady duty by failing to learn of any evidence whatsoever from the FBI, who did act on the government's behalf in the case.

"Thereafter *Brady v. Maryland*, 373 U.S. at 87, 83 S.Ct. at 1197 Held that suppression of material evidence justifies a new trial 'irrespective of the good faith or bad faith of the prosecution'" *Giglio v. United States*, 405 U.S. 150 (1972)

If the evidence in Issue 9 was irrelevant the State would have made the effort to turn it over; and although the bulk of the grounds for a new trial are centered around Issue 9, there are other glaring failures of the Prosecutions Brady duty that act as coadjutors to justify a new trial. One of which is the Continuing duty to disclose that was not upheld in several regards. Prior to trial, upon arrest appellant elected to Proceed Pro Se and was denied. During this time a trove of information was suppressed including bar complaints, Civil action and other documents. Most notably even after receiving discovery from the OAG Civil action No.: EP-23-CV-0084 was still suppressed, and appellant Produced unserved Summons Forms as evidence. Results of an investigation by the South Carolina Board of Labor, licensing, and regulation, as well as results of any other relevant investigations were also not disclosed, or investigated by then Counsel.

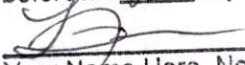
"The Sixth amendment as made applicable to the States by the Fourteenth guarantees that a defendant in a State Criminal trial has an independent Constitutional right of self representation and that he may Proceed to defend himself without Counsel when he voluntarily and intelligently elects to do so" *Faretta v. California*, 422 U.S. 806 (1975)

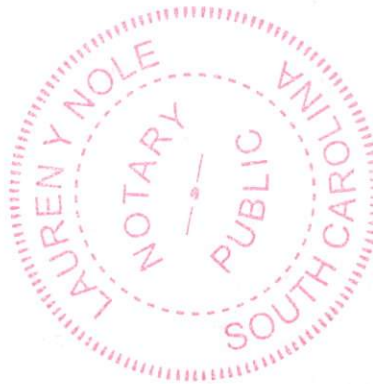
"As the Supreme Court has explained, a Criminal defense lawyer possesses a duty to conduct a Pre trial investigation that is "reasonable under Prevailing Professional norms." *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052

As a final deduction Issue 6, Issue 12, and Issue 16 will be integrated under the umbrella of Brady Suppression to support appellants Motion to Compel Evidence and Motion for a new trial. Appellant raised Jurisdictional Challenges to this case orally in Court, by Paper Filing, and to the evaluating doctor who noted this in her report. Appellant also Filed Separate discovery Motions requesting disclosure from the government citing Rule 26 Gov. R. Civ. P. as Civil Procedure was used through the evaluating doctor by the State. (44-23-410 is clear in that it explicitly states two or two sets of doctors

is required.) thus making the State the party that "opened the door." Even if these facts were to be set aside, appellant filed a request for a copy of the agreement between the USAO in both jurisdictions to prosecute the case in State Criminal Court Pursuant to Rule 19 Fed. R. Crim. P. as this case is, as far as allegations are concerned, a mirror image of *Elonis v. United States*, 575 U.S. 723 (2015) where the question raised was by an individual prosecuted under 18 U.S.C.A. Sec. 875, which would corroborate jurisdiction challenges.

It is for these reasons Appellant moves the court grant Motion to Compel Evidence and Motion for a new trial, and reverse the conviction and sentence and remand for further proceedings.

State of: South Carolina
 County of: Berkeley
 The foregoing instrument was acknowledged
 before me 27 day of August, 2020

 Your Name Here, Notary Public
 My Commission Expires 04-12-2031



8-27-2020

