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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTONIO VASHON BARNES, JR.,

APPELLANT.

Appellate Case No. 2023-001390

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Appellant petitions this Court for rehearing.[1] The ruling of this Court was essentially that the trial court abused its discretion in permitting the State to cross examine Appellant on his own rap lyrics, because Rule 5 and *State v. Lawton* required the specific song in question be provided to defense counsel in advance of trial, and that such was prejudicial as opposed to harmless error. Counsel respectfully submits that this Court has erred in arriving at its holding and reversing Appellant's conviction. Respondent would respectfully argue:

Lawton is plainly distinguishable

In *Lawton*, the facts demonstrated that "the State produced a letter Lawton had allegedly written to his ex-wife" essentially admitting that his explanation of the crime was not truthful. The defense objected and argued that the letter should have been disclosed prior to trial under

[1] A Petition for Rehearing is required before a party can seek a Writ of Certiorari from the South Carolina Supreme Court. Rule 242, SCACR.

subsection (a)(1)(A) of Rule 5, SCRCrimP. The defense's argument correctly asserted that it was a relevant written statement "within the State's control." The trial court ruled it was admissible because it was being used for impeachment rather than the State's case-in-chief. On appeal, this Court found that the letter was relevant and that the lack of disclosure prejudiced Lawton in changing the calculus of whether he would testify at trial. For four separate reasons, Appellant Barnes did not face the same circumstances and *Lawton* was improperly applied to this case.

First, the clear distinction is that in *Lawton*, the State was in *sole and exclusive control* of the one and only letter. Consequently, there was no way for defense counsel to find the letter and review its contents other than to receive it via discovery. Here, the State exercised *zero* possession, custody, or control over the video content in question. It was merely a publicly accessible piece of artwork created by Appellant and exclusively controlled by Appellant on his own Youtube channel.

Second, in *Lawton* the State did not disclose their possession of the letter, nor did they make their intent to use the letter for impeachment known to the defense. It is clear that Lawton was caught off guard by the existence of the letter and the State's use of it on cross-examination. Neither of these facts are consistent with this case. It is perfectly clear from the record that the defense knew the State was aware of Appellant's rap videos, his rap name, and by way of the immunity hearing and pretrial discussions, the State's anticipation that his rap lyrics would provide impeachment material. It is also clear from the record that the solicitor told defense counsel that their knowledge of Appellant's rap videos was not limited to the phone dump data; they explicitly told Appellant how they discovered the other publicly accessible materials – a simple Google search of Big Hoodlyfe. Defense counsel concedes that this conversation took place but complained that they had not explicitly *provided* these videos and that such was a trial by ambush.

(R. p. 955-956). Instead of raising their supposed concern for Rule 5 inadequacies to the court in advance of trial, they claimed ambush for substance they admittedly knew existed.

Third, the purpose of Rule 5 is to inform the defense as to what the State has at its disposal so as to ensure a fair trial – the state did so and Appellant and his counsel were freely able to review his posted rap content in preparation for trial. Possession, custody, or control is required to trigger Rule 5, but this Court has confused those requirements as being equivalent to awareness and accessibility, and it has excused the defense of any dutiful obligation of preparation for known matters.[2] See *Hyman v. State*, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012), abrogated on other grounds *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (noting that compliance with Rule 5 is a fact-based inquiry, and *disclosure of the existence* of a drug sale videotape and making such *available for inspection* satisfied Rule 5)(emphasis added). The State can be fairly said to have done the same.

Fourth, following the immunity hearing Appellant would have been legally permitted and fully capable of removing every single video from Youtube, leaving the State with no means of further investigation and no right to the content in question – *that* is demonstrative of possession, custody, and control. Instead of rightfully charging the defendant with having the knowledge,

[2] "Rule 5(a), SCRCrimP requires disclosure of documents within the possession, custody, or control of the prosecution; it does not require production of documents in the possession, custody or control of a third person. *State v. Gulledge*, 321 S.C. 399, 468 S.E.2d 665 (Ct. App. 1996), aff'd as modified, 326 S.C. 220, 487 S.E.2d 590 (1997). In fact, the majority of state and federal courts which have interpreted similar rules have held if the prosecution does not have the material or evidence sought by the defense actually in its possession, disclosure is not required; the only exception is where the evidence is in the possession of another governmental agency. *State v. Gulledge*, 321 S.C. 399, 468 S.E.2d 665 (Ct. App. 1996), aff'd as modified, 326 S.C. 220, 487 S.E.2d 590 (1997) (Supreme Court's opinion)." § 25:3. Criminal cases: State's duty of disclosure, Trial Handbook for South Carolina Lawyers § 25:3 (5th ed.)

access, and expectation that his rap videos[3] (which he left available to the prosecution, his own attorneys, and the public at large *after* learning of the State's interest in their impeachment potential) would *likely* become part of the case against him in relation to his mental impressions regarding the crime, this Court has awarded him with a new trial under the premise that he was somehow surprised by these materials and the State's approach on cross-examination. To the extent that it relates to the preparation of his defense, and his decision on whether to testify, it is rewarding a purposeful lack of diligence and a *willful* ignorance on the part of defense counsel.

Lawton does not apply because at the heart of the *Lawton* decision is the lack of knowledge of the disputed impeachment evidence and the State's sole control over such. Appellant knew of his videos, knew of their content, knew the State was aware of his videos and would attempt to use them against him at trial, knew where to find these videos, knew how to direct his attorneys to find them, and knew how to take them down if he wished. Discovery rules are a shield to ensure fairness, not a sword to wield when one's own inaction can conveniently serve as a flawed basis for reversal.

Lack of authority to constitute error on the part of the trial court

This Court's error in the application of law and fact does not stop with *Lawton*. The Court also took mere footnote notice of the State's argument that Appellant was on notice as to his Youtube videos, but found nothing to suggest that Rule 5 substantiates the argument. However, the

[3] Rights under *Brady* and Rule 5 emanate from different places, but they are joined the purpose of ensuring that a defendant receives a fair trial (*State v. Kennerly*, 331 S.C. 442, 454, 503 S.E.2d 214, 220 (Ct. App. 1998), aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999)), and *Brady* has the commonsense limitation that it only applies to evidence which the prosecution has, but which is unavailable to the defendant. *Anderson v. Leeke*, 271 S.C. 435, 438-39, 248 S.E.2d 120, 122 (1978). *Brady* insists on a diligent defender and it relieves the state of producing evidence equally available to the accused. *Id*. The possession, custody, and control language of Rule 5 hinges upon the same sentiment.

Hyman Court's reference to disclosure and opportunity for review would demonstrate otherwise. In refuting the State's argument, the only referenced authority from this Court was dicta in *Early v. State*, 418 S.C. 255, 268, 792 S.E.2d 226, 233 (2016). Dictum is not the law (*Gordon v. Lancaster*, 425 S.C. 386, 395, 823 S.E.2d 173, 177 (2018) (Few, J. concurring), and the Court's attempt to distinguish a lack of mention of "Youtube" *specifically*,[4] willfully disregards the fact that the precise manner in which the State found *Appellant's videos* was to google *Appellant's* rap name, a fact made known to defense counsel in advance of trial.[5] This Court has mistakenly treated the materials in question as some buried or obscure content that Appellant and/or his counsel could not find without precise instructions, when the reality is substantially different. The State was able to find these materials, easily, without knowing they even existed. The defendant could certainly find them, knowing precisely where, how, and why they exist. *This Court does not articulate a factual error on the part of the trial court*, it construes the facts in an unreasonably narrow manner in order to cradle the supposed logic of its own ruling. Moreover, in the absence of a clear prohibition against applying Rule 5 in the manner the trial court did here, there is no precedent to articulate that trial court *abused its discretion* by committing an error of law. Appellant's rap

[4] The Court is free to take judicial notice that a google search of "Big Hoodlyfe" immediately produces a Youtube link as its top results for the same. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *State v. Odom*, 412 S.C. 253, 266, 772 S.E.2d 149, 155 (2015).

[5] This Court also attempts to suggest that the lack of knowledge for *when* the disputed lyrics were written would have been important for the jury's deliberation. However, the solicitor tells the jury that the video in question came *before* the crime occurred, and Appellant argued the same in brief. (R. p. 945; Brief of Appellant p. 36). The jury potentially questioning the timing of the rap video was not undisclosed nor was it in dispute – the solicitor flatly admitted told the jury that it was created before the crime and the record also contained reference to a prior robbery that T.O. had experienced in the weeks before his death. (R. p. 91; 651; 669; 905-906). The Court's factual basis for its ruling is in error.

content was collectively disclosed by the Solicitor and it was available for review by the defense. Whether the failure to review such evidence was by way of tactic, indifference, or mistake, the defense *chose* not to explore the content readily available to them and chose not to bring the pretrial disputed issue to the court's attention. The law does not reward failures in diligence .

Lack of prejudice resulting from the lyrics

The Court also erred in its application of the harmless error doctrine. By its own account, this Court stated: "Barnes primarily relied on a self-defense theory at trial along with his explanation that he thought he was being robbed at the time of the shooting. There was no evidence presented apart from his own testimony at trial and accounts of what he told others to corroborate his account of why he shot Griffin and Dash." In citing to *State v. Black* as support of finding against harmless error, this Court set forth the factors established for addressing harmless error in circumstances where disputed evidence impacts credibility. However, those factors were then ignored and the Court's rationale for harmless error appears to rely upon Appellant's lack of supporting evidence for his own defense. One's lack of evidence to support their defense is not equivalent to a heightened risk of prejudice to credibility, and a weak case is not a crutch that a defendant can lean on to gain advantage in harmless error analysis – a weak case is simply a weak case, and the potential for prejudice is *less* where there is so little support for a defendant's position.

When the totality of the evidence is taken into consideration, which this court should have done, it is clear that there was no basis for the jury to find him credible well before Appellant's cross-examination. The record showed the following:

- Rather than yell or plead for help, Appellant attempted to conceal his shooting of Victims from Ms. Washington and Ms. Griffin by carefully stepping outside his bloody apartment; (R. p. 530-536; 563-564)

- Appellant behaved similarly, and in truth, somewhat aggressively with the apartment's HVAC technician (Mr. Archie) who responded to hearing gunshots and knocked on Appellant's door out of concern; (R. 586-589)
- Appellant did not dial 911 after committing the shooting, despite learning that he had shot and killed his own supposed *friends;*
- Appellant did not inform police of his involvement in the shooting, he instead fled the scene for two hours before returning and claiming self-defense in what he allegedly thought was a robbery of his home; (R. p. 569; 635-636; 929-931)
- In quick succession, Appellant gave three conflicting stories to Mr. Archie after leaving his apartment. The changes in story came when Mr. Archie expressed doubt as to the prior story's plausibility; (R. p. 593-596)
- Appellant's version of the story told to Javontae Davis varied yet again; (R. p. 622-626)
- Appellant lied about his connection with Ms. Smalls, who he claims simply walked in and took his gun from him and then hid it under her mattress, despite no instruction or request for her to do so.
- The record shows that despite his insistence that he barely knew Ms. Smalls and did not have her number – there were 15 phone calls shared between the two of them in the hours immediately following the shooting. Despite having been caught in this lie, Appellant still denied knowing Ms. Small's phone number to police despite having his phone with him while being questioned; (R. p. 650-654; 876)
- Contrary to Appellant's version of events, there were no signs of forcible entry into the apartment, the apartment was not dark which belied the possibility of confusing

his own friends' identities, and each victim sustained at least 6 gunshot wounds each. Victim Dash's wounds displayed stippling, indicating they were fired no more than 3.5 feet away. Appellant offered no explanation as to how these gunshots were so close in proximity, if the victims were on the ground. (R. p. 699; 610; 804-819)

- Appellant's version of events provided no explanation for how a supposedly hasty and panicked shooting of two people on the ground with numerous rounds of ammunition, could result in no bullet holes to the floors or walls of the apartment; (R. p. 708-709)
- Victim Griffin sustained a contact gunshot wound to the lower head, indicating that Appellant had not hastily fired at Griffin while he was on the floor, but had pressed the pistol into contact with Victim Griffin's head when he fired. Appellant did not contest this evidence and he offered *no explanation* for how this could possibly have happened in his version of events; (R. p. 821-830)
- Appellant's testimony on direct is self-contradictory, where he in one instance claims that he went to get his phone to call 911 after Ms. Griffin and Ms. Washington entered the apartment, he then claimed that he had already retrieved his phone and that this was why it took him so long to respond to the ladies' knocking at his door, and he then claimed that the ladies never knocked at all, he just let them in immediately. (R. p. 922-923; 976)

Credibility is not a question reserved solely for evaluating how one presents himself on the stand. It is an evaluation of the believability of a witness's testimony in light of the totality of the evidence presented at trial. Respondent contends that no error exists, but in considering harmless error, "'our jurisprudence requires us not to question whether the State proved its case beyond a reasonable

doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.'" *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020). (quoting *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). "Put simply, the harmless error rule embodies a commonsense principle our appellate courts have long recognized—'whatever doesn't make any difference, doesn't matter.'" *Id*., (quoting *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)). Appellant put the muzzle of his gun to the back of his own friend's head and pulled the trigger, and simultaneously wanted the jury to believe he did not know who he was shooting, that he did not have a hand in hiding the weapon, that he did not provide conflicting stories to bystanders in the complex, that he did not flee the scene for hours until he could get his story straight, and that his failure to call 911 for the lives of his own friends is not at all contrary to self-defense. Credibility was not reasonably in dispute. This court clearly failed to take into consideration any of the dozen reasons for why Appellant and his supposed story were entirely lacking credibility. Such was in error in considering the harmless error that his rap lyrics were prejudicial at trial.

Prejudice is also lacking when considering the practical impact on Appellant personally. Appellant was able to respond and correct the Solicitor's dictation of his lyrics. Appellant also had more than enough notice that his rap lyrics may be raised during trial and therefore could adequately gauge whether he wished to risk testifying at trial in light of that possibility. Contrary to this Court's rationale, Appellant's weak case made testifying on his own behalf practically mandatory if he were to have any chance of presenting a case in self-defense. Rap lyrics would have had no impact on that reality and would not have changed his decision. Prejudice therefore does not arise, and the logical and practical implications of Appellant's defense demonstrate that

this Court gave no more than cursory thought to whether his rap lyrics actually changed anything about Appellant's lack of credibility or the trajectory of the jury's deliberations.

CONCLUSION

Based upon the above arguments, Respondent asserts that this Court has misapprehended certain facts and law that led to an improper result in this case. Appellant respectfully petitions for rehearing on this matter, and that for all the foregoing reasons, the ruling of the trial court be reversed.

Respectfully Submitted,

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By: *s/W. Joseph Maye*
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August 19, 2026

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PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court Order of April 24, 2024, the Petition for Rehearing, along with the Proof of Service, have been forwarded to Appellant's counsel, Lara Caudy via email today, August 19, 2026, to LCaudy@sccid.sc.gov and to Ms. Caudy's assistant, Sara McInnis, SMcInnis@sccid.sc.gov .

I further certify that all parties required by Rule to be served have been served.

This is the 19th day of August 2026.

s/W. Joseph Maye
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ATTORNEY FOR RESPONDENT

Brandy Rankin

From:	Brandy Rankin
Sent:	Wednesday, August 19, 2026 2:49 PM
To:	Caudy, Lara
Cc:	Mcinnis, Sara; Joe Maye
Subject:	Petition for Rehearing and Proof of Service - The State v. Antonio V. Barnes - Appellate Case No. 2023-001390
Attachments:	Petition for Rehearing - Antonio Barnes.pdf; Proof of Service - Petition for Rehearing.pdf

Dear Ms. Caudy,

Please find attached the Respondent's Petition for Rehearing and Proof of Service. These documents will be filed with the South Carolina Court of Appeals today, August 19, 2026 along with a copy of this email. Thank you.

Sincerely,

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Aug 19 2026
SC Court of Appeals

Brandy Rankin

Brandy Rankin, Legal Assistant to W. Joseph Maye
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