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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge

Opinion No. 2026-UP-393 (Filed August 5, 2026)

RETURN TO PETITION FOR REHEARING

On August 5, 2026, this Court reversed Appellant's convictions and remanded the case for a new trial. The State v. Antonio Vashon Barnes, Jr., 2026-UP-393 (S.C. Ct. App. filed August 5, 2026). Pursuant to Rule 221(a), SCACR, the state filed a petition for rehearing on August 19, 2026. On August 31, 2026, this Court requested Appellant file a return to the petition for rehearing within ten days. This return follows.

Appellant argued on appeal that the trial court abused its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because any probative value of the evidence was outweighed by the danger of

unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404, SCRE.

This Court correctly held the trial court abused its discretion in admitting the rap lyrics evidence pursuant to Rule 5(a)(1)(A), SCRCrimP, and State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009). The Court noted that the lyrics were not disclosed to the defense before trial. The Court correctly concluded that the lyrics were material to Appellant's defense because the evidence likely would have affected Appellant's decision to testify. The Court found that the lyrics directly refuted Appellant's remorse and called into question his self-defense theory. In holding the error was not harmless, this Court emphasized that there was no evidence presented apart from Appellant's own testimony at trial and the accounts of what he told others to corroborate his account of why he shot the decedents.

In its petition for rehearing, the state argued that State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009) is "plainly distinguishable" from this case. Pet. at 1. The state first asserted that this case is different than Lawton because in Lawton the state "was in sole and exclusive control of the one and only letter" the state used to impeach Lawton with during cross-examination. Pet. at 2. However, in this case, the state claimed it "exercised zero possession, custody, or control over the video content in question." Pet. at 2. Respectfully, this is blatantly false. The state was absolutely in possession of the lyrics it intended to impeach Appellant with if Appellant testified. The state knew before trial what the lyrics were and how it intended to use them. However, the state chose not to disclose the lyrics to the defense even upon request and instead surprised Appellant with the lyrics during cross-examination.

Second, the state asserted that this case differs from Lawton because in Lawton, the state did not disclose its possession of the letter nor make its intent to use the letter for impeachment

purposes known to the defense. Pet. at 2. The state argued that Lawton was clearly "caught off guard by the existence of the letter." Pet. at 2. However, in this case, the state argued, "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."[1] Pet. at 2. Notably, despite the state maintaining it is "clear from the record," the state provided no citations to the record in support of these arguments, which, respectfully, are not supported by the record.

The record demonstrates that Appellant was only aware of one rap video—the video uploaded to Instagram on January 18, 2019, that was discovered as part of the extraction of Appellant's phone. This video was discussed during Appellant's pretrial immunity hearing. See R. 259, l. 15 – 270, l. 22. Anticipating that the state may seek to admit this rap video during trial, Appellant filed a motion pretrial to exclude the rap lyrics. See R. 1235-1242. Notably, the motion only refers to "the rap video" in the singular. See R. 1235-1242.

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[1] Respectfully, this is simply not true. The state did not "explicitly" tell Appellant how it discovered the other rap videos. During Appellant's objection to the admissibility of the rap lyrics, the assistant solicitor asked, "which one of the Shealeys [defense counsel] asked me which rap song we were going to be talking about?" Luke Shealey answered, "That was me. I was trying to get you to disclose some evidence and you were generally pretty vague about it." The solicitor stated, "I told you it was on Google, right?" Luke Shealey responded, "You just said something about the Google machine. But you refused to answer my direct question - - on the matter." R. 962, l. 24 – 965, l. 2. Appellant strongly disagrees with the state's characterization that the solicitor "explicitly" told defense counsel how they discovered the lyrics or what the lyrics were. Rather, the solicitor was purposefully "hiding the ball." This Court correctly found this falls wholly short of proper disclosure pursuant to Rule 5, SCRCrimP.

At the beginning of Appellant's trial, defense counsel orally raised the motion before the trial court. Counsel argued the rap video downloaded from Instagram on January 18, 2019, and discovered on Appellant's phone extraction, should be excluded, as it was during the pretrial immunity hearing, because the state could not authenticate it, the rap video was not relevant, any probative value of the video was outweighed by its prejudicial effect, and it was inadmissible "bad character evidence." R. 494, l. 1 – 496, l. 10. In response, the assistant solicitor maintained the lyrics "would be fodder for cross-examination should he [Appellant] take the stand." The solicitor claimed, "Some of these lyrics are going to his [Appellant's] state of mind. *At least one of his rap songs specifically references him killing his two - - the victims in this case.*" R. 496, ll. 12-22 (emphasis added). The trial court indicated it would address the objection later in the trial. R. 496, ll. 23-24.

This was the first time the existence of more than one rap video was disclosed to Appellant. Notably, this occurred *during Appellant's trial*. At most, Appellant was now aware that more than one rap video *may* exist and be in the possession of the state. However, despite the state's argument in its petition for rehearing, the defense was not aware of Appellant's rap name as this was not disclosed during the early trial discussions. It was not until cross-examination when the assistant solicitor began questioning Appellant about "Big Hood Lyfe" and his rap videos that the defense learned of Appellant's rap name and the existence of additional rap videos posted to YouTube.

When defense counsel objected, the solicitor told the court that the state had *twenty-two* rap videos Appellant posted on YouTube between December 16, 2018, and August 31, 2022. Despite initially stating the videos were discovered on Appellant's phone, the solicitor later clarified that *only one song* was obtained from the extraction of Appellant's phone. The others

the state found on YouTube. The solicitor stated "as early as last week, we typed in Big Hood Lyfe in Google" and discovered Appellant's rap videos. R. 944, l. 24 – 947, l. 3 (emphasis added). Defense counsel correctly argued that if the state intended to use any other rap videos or lyrics as impeachment, besides the one video discovered on Appellant's phone, the state was required to provide the evidence to Appellant pursuant to Rule 5, SCRCrimP. Counsel clarified that she was not claiming a Rule 5 violation as to the video discovered on Appellant's phone. However, any additional rap videos the state "found somewhere on the internet that they intend to impeach him [Appellant] with" should have been provided to the defense pursuant to Rule 5. R. 947, l. 5 – 950, l. 2.

Back to the point, this case is no different than Lawton. Appellant did not learn of the state's possession of the rap lyrics until the state's use of them on cross-examination. Accordingly, unlike the state argued in its petition for rehearing, Appellant could not have raised his "concern for Rule 5 inadequacies to the court in advance of trial" because he was unaware the state had violated Rule 5 until the middle of Appellant's trial. Pet. at 3.

Third, the state argued this case is distinguishable from Lawton because the state made Appellant aware of the rap lyrics. More specifically, the state maintained, "The purpose of Rule 5 is to inform the defense as to what the State has as 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*."[2] Pet. at 3. Apparently, the state argues that it complied with Rule 5 by informing defense counsel *midtrial* about "the Google machine." See R. 964, l. 13 – 965, l. 1. This Court correctly held that this falls wholly short of complying with Rule 5. Pursuant to Rule

[2] Appellant and his counsel were not able to review the rap lyrics *in preparation for trial* because the state failed to disclose the lyrics. As argued above, the defense only learned of the potential existence of additional rap videos during trial when counsel first argued the rap lyrics from the video discovered during the extraction of Appellant's phone should be excluded.

5, the state was required to inform Appellant prior to trial about the rap lyrics its intended to use to impeach Appellant if he were to testify. As defense counsel asserted at trial, "Your Honor, if they had these lyrics last week, why didn't they produce them? . . . It is a Rule 5 violation."

The state cited to Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012), in support of its argument. See Pet. at 3. In Hyman, our Supreme Court held the state complied with Rule 5 when it allowed defense counsel to view the videotape of a controlled drug buy and provided the defendant with still shots from the video while the parties were engaged in plea negotiations. In short, as the state summarized in its petition for rehearing, the state in Hyman disclosed the existence of the drug sale videotape and made the videotape available for inspection by defense counsel. The state argued, "The State can be fairly said to have done the same" in this case. Pet. at 3. Appellant strongly disagrees with this assertion. At no point did the state make the defense aware of the existence of the additional rap videos and make the videos available for inspection. When defense counsel directly asked the assistant solicitor which rap lyrics the state intended to use as impeachment, the solicitor admitted he merely told counsel "it was on Google." See R. 964, l. 13 – 965, l. 1. This is hardly disclosing the existence of the additional rap videos and making them available for inspection. Moreover, the assistant solicitor admitted during arguments on Appellant's objection that there were twenty-two rap videos posted to YouTube, much unlike one video of a controlled buy in Hyman.

Fourth, and finally, the state distinguishes this case from Lawton, by arguing that, after the pretrial immunity hearing, Appellant should have known "of the State's interest in their [the rap lyrics'] impeachment potential." Pet. at 3-4. Respectfully, after the pretrial immunity hearing, which occurred roughly eight months before trial, Appellant was only aware of the state's interest in using the lyrics from the rap video found during the extraction of his phone as

impeachment, which is why Appellant filed the written pretrial motion to exclude this rap video. This was the only rap video disclosed to Appellant before trial.

The state also complains that this Court only mentioned our Supreme Court's opinion in Early v. State, 418 S.C. 255, 792 S.E.2d 226 (2016), in a footnote, and that Early is only dicta. Pet. at 5. Appellant disagrees that the Supreme Court's holding in Early that the state violated Rule 5, SCRCrimP, by failing to disclose Early's "See ya" message on the victim's Facebook page is dicta. The Supreme Court concluded that the PCR court in Early correctly found that the state should have disclosed the "See ya" message Early posted to the victim's Facebook page prior to trial pursuant to Rule 5 because it was relevant as evidence of witness intimidation. Early, 418 S.C. at268-69, 792 S.E.2d at 233. Just like in Early, in this case, the state was required to disclose the rap videos it discovered on YouTube to the defense prior to trial pursuant to Rule 5.

Finally, unlike the state argues, this Court properly applied the harmless error doctrine. The rap lyrics were used by the state to refute Appellant's remorse and call into question his self-defense case. Appellant's credibility was essential to his defense. This Court correctly concluded that there was no evidence presented apart from Appellant's own testimony and accounts of what Appellant told others to corroborate his account of why he shot the decedents.

Based upon the above argument, Appellant respectfully requests this Court deny the state's petition for rehearing. This Court correctly held the trial court erred by admitting the rap lyrics evidence when the state failed to disclose the evidence before trial pursuant to Rule 5, SCRCrimP.

Respectfully Submitted,

Lara M. Caudy
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ATTORNEY FOR APPELLANT

This 10th day of September, 2026.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Return to Petition for Rehearing in the above referenced case has been served upon W. Joseph Maye, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 10th day of September, 2026.

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

RECEIVED
Sep 10 2026
SC Court of Appeals

From: Mcinnis, Sara
To: SC - MAYE WILLIAM
Cc: Brandy Rankin; Caudy, Lara
Subject: 2023-001390 The State v. Antonio V. Barnes Jr. Return to Petition for Rehearing
Date: Thursday, September 10, 2026 10:14:00 AM
Attachments: 2023-001390 The State v. Antonio V. Barnes Jr. Return to Petition for Rehearing.pdf

Good morning Mr. Maye,

Attached for service in the above-referenced case is the return to the petition for rehearing, which will be filed with the Court of Appeals today, September 10, 2026, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330