



RECEIVED

SEP 29 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

Case No. 2014-001880

State of South Carolina Respondent,

v.

Paul Ioan Tat Appellant

APPELLANT'S FINAL BRIEF

Attorneys for Respondent:

John Baker Cleveland, III, Esquire
214 Main Street
Pickens, SC 29671

Salley W. Elliott, Esquire
Allan McCrory Wilson, Esquire
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC, 29201
Phones: 803.734.3970

Appellant:

Paul Ioan Tat
518 Fond Du Lac Drive
Central, SC 29630
864.207.3485

TABLE OF CONTENTS

Table of Authorities.....	ii, iii
Statement of Issues on Appeal.....	1
Case History and Facts.....	1
Statements of the Case and Arguments.....	2

Arguments

1. Because the Circuit Court Judge Letitia Verdin erred on the Appeal procedure, addressing the judgement to the Motion to Reconsider Judgment and not the Motion to Appeal Conviction Judgement, the Appellant constitutional right to a fair trial was violated.
2. Because the State evidence were delivered at the Magistrate Court trial and copies were not submitted to the Defense prior to the trial the Appellant right to a fair trial guaranteed by The Constitution, Amendment XIV, was violated.
3. Because and the Magistrate Court rejected during the trial the Defense Motion to Continue, to asses the State incriminatory evidences and the witnesses depositions introduced at the trial, the Appellant right to a fair trial guaranteed by The Constitution, Amendment XIV was violated.

Conclusions.....	10
------------------	----

Tables of Authorities

Cases

Brady v. Maryland, 373 U.S. [83, 87 (1963).....	3,5,7,9
United States v. Agurs, 427 U.S. 97(1976).....	7
Valenzuela-Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982)...	9
Ball v. Texas, 631 S.W.2d 809 (Tex. App. -Eastland 1982, pet. ref'd).....	7
California v. Trombetta, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2D413 (1984).....	8,9
United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984).....	8
United States v. Starusko, 729 F.2d 256, 261 (3rd Cir. 1984).....	9
Ham v. State, 760 S.W.2d 55 (Tex. App. -Amarillo1988, no pet.).....	8
United States v. Hart, 760 F. Supp. 653 (E.D. Mich.1991).....	8,9
Holmes v. South Carolina, 547 U.S. 319 (2006).....	7

Constitutional Provisions

U.S. Constitution, Amendment XIV, passed by Congress June 13,1866, ratified July 9,1868

Statues

S.C.R.C.P Rule 5 Disclosure in Criminal Cases (a)(1)(C) and(D), (a) (3).....5

S.C.R.C.P Rule 5 Disclosure in Criminal Cases (b)(1)(A) and (B).....5

S.C.R.C.P Rule 5 Disclosure in Criminal Cases(c).....5

S.C.R.C.P Rule 7 Continuances (c).....5

S.C.A.C.R Rule 203 d (1) (B) Notice of Appeal.....4

FRE. Rule 103. a,(1),b (2014 Ruling on Evidence.....4

FRE. Rule 401. a, b, (2014)Test on Relevant Evidence7

FRE. Rule 1004 (2014) Admissibility of Other Evidence of Content.....9

Other Authorities

SC Senior Assistant Attorney General N. Mark Papoport, letter of May 12, 2011 to
Anderson County Sheriff's Department Office.....6

Reference Case No.

2013CP3901329; Pickens Cty Court of Common Pleas; Judge Letitia H. Verdin

2013CP3910329; Central Magistrate Court; Magistrate S. Michael Gillespie

2013CP3901178; Pickens County Court of Common Pleas; Judge - Edward Welmaker

2013A3910300068; Central Magistrate Court; Magistrate S. Michael Gillespie

Statements of Issues on Appeal

1. Circuit Court Judge Letitia Verding erred rejecting the Motion to Reverse Judgement and affirming the judgment and conviction from Magistrate Court.
2. The State represented by Detective J. Gardo and Judge S. Michael Gillespie infringed on the Appellant rights to a fair trial, Constitution, Amendment IV.

Case History and Facts

1. Appellant is arrested on February 20th, 2013 for CDV and incarcerated in the Pickens County Jail. Record on Appeal (R) 7, 2. (b)., Appeal, Oct 23, 2013, ;
2. February 21, Appellant is released on bail upon giving written statement and pictures of his bodily injuries are taken by Detective J. Gardo, R. 58;
3. August 21st, in the Magistrate Court, Judge S. Michael Gillespie finds the Appellant guilty of CDV sentencing him to 26 hours of Domestic Violence Behavioral Changing Program. Sentence completed the by September 1st;
4. September 3rd, Appellant files Motion to Reconsider; R.31;
5. September 13th, the Motion to Reconsider was denied for untimely filed reason. Magistrate Court Order of September 13th; R.29;
6. September 19th, Appellant files the Motion to Appeal the Magistrate's Court Order of September 13th in the Pickens County Civil Court; R.17;
7. October 7th, Judge Edward Welmaker ruled the Motion to Reconsider/Amend Judgement was timely filled and remanded the case to the Central Magistrate Court; Judge E. Welmaker Order, R.16;

8. October 14th, Judge S. Michael Gillespie denies for the second time the Motion to Reconsider Judgement. No reason given; Magistrate Court Order ; R.14;
9. October 23th Appellant introduces Notice of Appeal and the Motion to Appeal Conviction Judgement in the Pickens County Civil Court; Judge S. Michael Gillespie response to Motion is missing from the County Clerck Case file; R.13; R.6;
10. July 25th 2014, Judge Letitia Verdin, presides the hearing on the Motion to Appeal Judgement. Present: Appellant and District Att. Ass. Cleveland Baker for the State.R.41;
11. District Attorney Ass, Cleveland Baker introduced The State brief: “Magistrate Second Response”, an untimely 251 days late response from Judge S. Michael Gillespie to the case. The Response appears to address the Motion of October 14th, 2013 to Amend/Reconsider Judgement and do not address the Motion to Appeal Conviction Judgement in the Circuit Court of October 23th, 2013. The State Brief is missing from the Pickens County Clerck of Court case file. Appellant copy attached. R.4
12. On August 1st, 2014 Judge Letitia H. Verdin affirms sentence; R.2;
13. Appellant receive Judgement on August 5th, 2014. R.3;
14. Appellant file Notice of Appeal and receive notice in September 30th, 2014;
- 15 Appellant files Brief and Record of Appeal on October 29th, 2014,

Statements of the Case and Arguments

1. Circuit Court Error

- A. The Judge erred stating the Notice for Appeal should state the Appeal Ground and the Motion to Appeal Judgement does not state the ground for the Appeal.
- B. The Circuit Court accepted the introduction of the “Magistrate’s Second Response”

which misdirected the issue of the USA Constitution, Amendment XIV violation, prejudicing the Appellant right to a fair hearing. R.4, R.5, R.14, R.15;

C. The Circuit Court failed to acknowledge the “Magistrate’s Second Response” is not addressing the Motion to Appeal Judgement, however, addressing the Initial Magistrate Court hearing and the Motion to Reconsider Judgement that was not the subject of the Circuit Court hearing. R.4, R.5;

D. The Circuit Court failed to acknowledge de “Magistrate Second Response” deprived the Appellant of answers to the questions of the missing case evidences and the State duty to provide the Defendant prior to trial with copies of the State evidence on the case, effectively depriving the Appellant of any means to defend and consequently violating his constitutional rights to a fair trial. *Brady v Maryland*, 373 U.S. R.4, R.5;

E. The Circuit Court failed to notice that the Clerk of Court file of the case does not contain a “Magistrate’s First Response” from Judge Michael S. Gillespie, as implied by the “Magistrate’s Second Response”. R.4; R.5;

Arguments

A. Circuit Court Judge erred stating the Notice of Appeal should state the reason for the Appeal and the that petition is raising only factual issues and erred affirming conviction. R.3;

The base for the Appeal , deriving from *Brady v. Maryland*, 373 U.S. [83, 87 (1963), the Constitution Amendment IV and the self defense position of the Appellant as the base for the Appeal, is stated and argued with specific explanation. R.7 (Questions 2 and 3), R.11 (Questions 2 and 3), R.12 (Summary). The Judgement of August 5th, 2014

state the Notice of Appeal did not contains the ground for the Appeal and the Appeal contains only factual issues. R.3, R.44. R.45. paragraph 2.

Based on SCACR Rule 203 d (1) (B), the Notice of Appeal does not require to state the ground for appeal and the Notice for Appeal filed on October 23, 2013 complies with SCACR. The Petition of October 23rd, 2013 however, summarizes the ground for the appeal. R.11, R12;

B. The court erred accepted the Magistrate Second Response, a late and untimely answer to the Motion to Appeal Judgement Oct 23, 2013. R.54; R.55;

Based on the Rules 74 and 75 of SC Rules Civil Courts the Magistrate Judge:

“Within 30 days of the date of the filing of the Notice of Appeal with the Clerk of Court the magistrate judge is required to file a Return to the Notice of Appeal with the Clerk, together with the record, a statement of all proceedings in the case, and, if necessary, the testimony taken at trial. (Rule18, SC Rules of Magistrates Court) “

Magistrate Judge fail to respond timely to the Notice to Appeal. However, the response admitted by the Court at hearing is pointing the court to issues not listed in the Motion to Reverse Conviction Judgement and do not addresses the Constitutional rights violations.

C. The Magistrate Second Response refers to the Motion to Amend Judgement submitted twice for his review and denied twice for different reasons. The case was removed from Magistrate court on Oct. 23 and by the Rule 18, SC Rules of Magistrates Court, the Judge was required to answer to questions and arguments raised in the Motion to Reverse Judgement. The Magistrate failed to answer those questions and there is not any answer in the case file. FRE. Rule 103. a,(1),b (2014). Pickens County Clerk of Court has no records on file of the Magistrate

Court Judge Michael S. Gillespie responses to the Motion to Reverse Conviction
Judgement filed on October 23, 2013.

2. United States Constitution, Amendment XIV.

A. The State did not provide pre-trial evidences the State was introducing at the trial, mainly the AnMed medical records, victim's pictures, Anjelika Tat voluntary statement and prejudiced the Appellant rights to defend and to a fair trial. S.C.R.C.P Rule 5.

Evidence: CD #.1 of August 21, 2013, total time 1:47:30 (h:min:sec). R. 73;

Time into the recoding:

13:31 - The State introduces the evidence "Anjelika Tat bodily injuries pictures";

27:37 - The State sworn in the AnMed medical records manager and a copy of "Anjelika Tat AnMed medical record" is delivered to the Court ;

28:50 - Judge denies Defendant request for copies of the pictures and order a copy of the medical record made for the Defendant;

32:02 - The State introduces the evidence "Anjelika Tat Voluntary Statement";

40:65 - Detective J. Gardo introduces the evidence "Anjelika Tat's AnMed Health medical records" already in his possession at the time of the arrest;

50:55 - Court acknowledge the medical record subpoena by Defendant were delivered during trial;

1:04:22- Defendant ask for continuation to examine evidence in its defense. Judge denies the Motion for Continuation; S.C.R.C.P Rule 7.

CD #.2 of August 21, 2013, total time 1:11:09 (h:min:sec). RA 12;

28:04 - Detective J. Gardo admits having the medical records available prior arrest.

Arguments

There are three essential components of a true Brady violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. A Brady violation occurs when the government fails to disclose evidence materially favorable to the accused. See 373 U. S., at 87.

- ☒ The State, represented by Detective J. Gardo, violated the Defendant Constitutional, Amendment IV rights, by withholding and destroying evidence: Anjelika Tat statement, Anjelika Tat injuries pictures, pictures of Defendant injuries.
- ☒ Denying the Defendant pretrial access to the medical records, prevented the Defendant to subpoena MD Jeanette Kinsey or any AnMed personnel, as expert witness and as the only persons that on the the night of 19 to 20 February 2013 professionally examined the Victim and Defendant.

3. Preservation of evidence

Evidence CD #2 of August 21, 2013, total time 1:11:09 (h:min:sec). R.73;

Time into the recording:

23:24 - Detective J. Gardo admits of taking pictures of the Appellant bodily injuries and not introducing them as evidence in the case;

26:44 - Detective J. Gardo admits of not introducing the pictures because he believed the pictures were not needed to support his investigation, arrest and case prosecution;

28:04 - Detective J. Gardo admits having the records available at the day of the arrest;

SC Senior Assistant Attorney General N. Mark Papoport, letter of May 12, 2011 to Anderson County Sheriff's Department Office in reference to S.C. Code Ann. §§ 17-28-300 et seq., the "Preservation of Evidence Act", states:

“ We advise, however, that there are other matters to consider regarding the return or disposition of physical evidence and biological material pursuant to §17-28-320 (C). The Act requires the preservation of physical evidence and biological material for the twenty-four offenses enumerated in §17-28-320 (A), but **other criminal offenses** would not be subject to the Act's provisions . We refer to Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 582 (2000), where the court discussed the canon "*expressio unius est exclusio alterius*," or "to express or include one thing implies the exclusion of another." *Evidence in cases involving these other criminal offenses should, therefore, be preserved by evidence custodians while these cases are pending either at trial, on direct appeal, or while a defendant pursues or is able to pursue post-conviction or federal habeas relief. In order to avoid violating a defendant's constitutional rights or depriving the State of evidence that it may later need to re-prosecute defendants at a later date, we advise that evidence in these cases should not be destroyed, returned, or disposed of without reasonable notification to and approval of the Circuit Solicitor.*”

The missing evidence prevented the Defendant to sustain and connect the self defense claim with the MD. Jeanette Kinsey notes in the medical records that describes injuries on the Defendant's body and supports the Defendant claims of self defense:

“Husband has bruises and scratches around neck that he reports as defensive injuries.” R.67, Paragraph 1

The Defendant pictures taken by Detective J. Gardo would have supported Appellant position of innocence and self defense and would have cast doubt on the State witnesses.

“the proper standard of materiality of undisclosed evidence, and the standard applied by the trial judge in this case, is that if the omitted evidence creates a reasonable doubt of guilt that did not otherwise exist, constitutional error has been committed. Pp. 112-114.; Id. at 87, 83 S.Ct. at 1196-97. That rule has been expanded to require that, even though a defendant has not made a specific request for exculpatory material, the prosecutor is under a duty to volunteer evidence "obviously of such substantial value to the defense that elementary fairness

requires it to be disclosed." United States v. Agurs, 427 U.S. 97, 110, 96 S.Ct. 2392, 2401, 49 L.Ed.2d 342 (1976). The rule laid out in Brady requiring disclosure of exculpatory evidence applies both to materials going to the heart of the defendant's guilt or innocence and to materials that might alter the credibility of a crucial prosecution witness. Ball v. Texas, 631 S.W.2d 809. Holmes v. South Carolina, 547 U.S. 319;

The State:

A. Failed to provide the Defendant pre-trial copies of victim medical records, pictures and Voluntary Statement. S.C.R.C.P Rule 5, FER Rule 401, a, b;

"Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or to punishment, Brady v. Maryland, 373 U.S. [83, 87 (1963)]; Ignoring that notions of fundamental fairness prevails and the accused must have a meaningful opportunity to present a complete defense. California v. Trombetta 467 U.S. 479, 480 (1984)". United States v. Hart, 760 F. Supp. 653

B. The State failed to preserve and disclose the pictures taken at the Defendant's release from the County Jail on February 21st, showing bruises, cuts and scratches on the body. Accordingly, the government must preserve and disclose to the defense favorable body injuries evidences, that concur with the MD Jeanette Kinsey notes in the medical records, R.67, paragraph 1, evidence that is material, physical proof to the Defendant claim of self defense and innocence. U.S. Const. Amendment XIV; *California v. Trombetta*, 467 U.S. 479, 480 and 485-88 104 S. Ct. 2528, 81 L. Ed. 2D 413 (1984); *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct.1194, 10 L. Ed. 2D 215(1963). Holmes v. South Carolina, 547 U.S. 319, Brady v. Maryland holds that :

"the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady, 373 U.S. at 87, 83 S.Ct. 1194;"

United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984):

“Names and addresses of eyewitnesses to offense that State does not intend to call to testify”

Ham v. State, 760 S.W.2d 55 (Tex. App. -Amarillo 1988, no pet.):

“Prosecution withheld doctors report which support defense position and refuted prosecution.”

C. Detective J. Gardo representing The State as “custodian of evidence” (SC Section 17-28-310(2)) witness and prosecution, had in the absence of a specific request the constitutional duty to preserve and provide the Defendant and the court with the exculpatory evidence that would have raised doubt about the defendant's guilt.

Detective J. Gardo prejudiced the Defendant by not providing prior to trial all the evidence The State was introducing to the trial. The Due Process Clause of the Fourteenth Amendment, United States v. Valenzuela-Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982), Brady v. Maryland, 373 U.S. [83, 87 (1963)], California v. Trombetta, 467, U.S. At 465;

In United States v. Hart, 760 F. Supp. 653 (E.D. Mich. 1991), the Court held that

“it was the court’s responsibility to fix the timing for disclosure of exculpatory evidence. Other courts have issued opinions stating that “disclosure must be made in time for effective use at trial” ; United States v. Starusko, 729 F.2d 256, 261 (3rd Cir. 1984),

D. Detective Gardo admission of destroying exculpatory evidence should have been in lieu of originals. FER 1004. Admissibility of Other Evidence of Content.

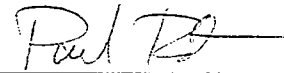
Conclusions

For the reasons stated above, this Court should reverse the Circuit Court Affirmation and the Magistrate Court Conviction of Criminal Domestic Violence. This Court should reverse the damage award.

Respectfully submitted,

July 6th, 2015

South Carolina Courts of Appeal

A handwritten signature in cursive script, appearing to read "Paul Tat", is written over a horizontal line.

Paul Tat

518 Fond Du Lac Drive

Central, SC, 29630

864.207.3485