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 REPLY BRIEF

Attorneys for Respondent:
Susannah R. Cole
Post Office Box 11549
Columbia, SC 29211

Allan McCrory Wilson, Esquire
Rembert Dennis Building
1000 Assembley Street, Room 519
Columbia, SC, 29201

W. Walter Wilkins, III
214 East Main Street
Pickens, SC 29671
(864) 898-5906

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

TABLE OF CONTENTS

Tables of Authorities

Cases



STATUTES

Rules



Other Authorities



---

Reference Case No.
2013CP3901329; Pickens County 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 Appeal on 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.

## STATEMENT OF THE CASE

1. February 20th, 2013 Appellant is arrested on CDV charges.

2. February 21, 2013Appellant is released on bail upon giving written statement and pictures of his bodily injuries are taken by Detective J. Gardo.

3. March 11th, 2013, the Appellant pleaded "not guilty" at the Pickens Magistrate Court trial presided by Honorable Judge Benjamin A. Dow and the case was transferred to Central Magistrate Court

4. August 21st, 2013 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 2013;

4. September 3rd 2013, Appellant files Motion to Reconsider;

5. September 11th 2013, the Motion to Reconsider was denied for untimely filed reason. Magistrate Court Order of September 13th 2013;

6. September 19th 2013, Appellant files the Motion to Appeal the Magistrate's Court Order of September 13th in the Pickens County Civil Court;

7. October 7th 2013, Judge Edward Welmaker ruled the Motion to Reconsider/Amend

Judgement was timely filled and remanded the case to the Central Magistrate Court;

8. October 13th 2013, Judge S. Michael Gillespie denies for the second time the Motion to Reconsider Judgement. No reason given;

9. October 23th 2013, 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 was never filed with the County Clerck Office;

10. July 25th 2014, Judge Letitia Verdin, presides the hearing on the Motion to Appeal Judgement. Present: Appellant District Attorney. Cleveland Baker for the State.

11. District Attorney 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 to Reconsider of October 13th, 2013 and not address the issues raised in Motion to Appeal Conviction Judgement in the Circuit Court of October 23th, 2013. The State Brief "Magistrate Second Response" was never filed with the Pickens County Clerck of Court .

12. On August 1st, 2014 Judge Letitia H. Verdin affirms trial sentence;

13. Appellant receive Judgement on August 5th, 2014.

14. Appellant file Notice of Appeal and receive notice in September 30th, 2014;

15 Appellant files Initial Brief on October 29th, 2014, etc, etc.

## Arguments

**Argument i. "Appellant has had several bites at the apple to appeal the lower court's ruling, but has filed to provide a sufficient record for review, has preserved no issue for appeal, and has failed to state specific errors of law as ground for this appeal."**

**Appellant**: Purposely or unintentionally the Counsel for the District Attorney addresses a marginal error issues confusing the proceeds

The Appellant apologizes for being self educated in the English language, and thanks the Counselor for the patience to translate the Appellant English, even if for most the law language is "foreign" as it is. The Appellant acknowledge that a law school graduate would have been more throughly in drafting the Appel Petition to Reverse Judgement to the Circuit Court to comply with a more formal accepted Appel format, and should have introduced a "Statement of Issues on Appeal" before the "Statement of the Case" to direct the Court attention to the issues of the law, and should have left out from the "Arguments" the issue of Appellant conviction based on lack of sustainable evidence. However, the Appellant is thankful for the comments, was and is striving to accommodate the law language and formalities to meet the court and the members of the justice field expectations. Appellant believed that only the Appel Court examines the issues of legal significance and the lower courts are examining the facts and possible law errors, until Honorable Judge Letitia Verding made the statement her court can only accept appeals for legal error and not factual issues. In that view the factual issues were excluded from the Appeal Court Brief.

Indeed, the Appeal Court is about procedure errors during trial and not about

the reason Magistrate Court Honorable Judge Michael S. Gillespie choose to to base his ruling on two Appellant statements at the trial (Appellant's choice of word "grab" and "Anjelika does not lie" (Audio Record Part 2), besides poor quality pictures not matching the medical record nor Anjelika Tat written statement or prosecution witnesses depositions.

This concludes the Trial, Motion to Reconsider and Appeal to Denial of Motion to Reconsider and the facts of the trial, do not make the case of the Appeal to Honorable Judge Letitia Verding and subsequently to the Court of Appeal review.

The Counselor for the State, citing State v Mitchell 330 S.C. 189,194, 498 S.E 2d 646, 644 (1998) and State v Williams, 321 S.C 455, 469 S.E. 2d 49 (1996), State v Knighton, 334 S.C. 125, 136, 512 S.E. 2D 117, 123 (Ct. App 1999) is stating the Appellant failed to provide sufficient record for review, referencing mainly the Magistrate trial Audio Tapes as difficult to understand. That seems to be an overstatement because the very next paragraph the Counselor states it reviewed the Audio Records (Arguments i, page 10,11) (Arguments ii, page 13, 14), as well in Statement of the Facts (page 4 to 9,) makes specific and ample references to the Audio Records of the trial. However, the Counselor ignores that the medical records were subpoena by the Appellant and not the State, to notice Detective Gardo, prior to trial, made the decision to withhold and destroy evidence based on his judgement and not law procedure, to notice Appellant requested continuation to review the records, be able to introduce AnMed employees listed in the records, as the case experts witnesses.

State v Culbreath, 377 S.C. 332, 659 S.E 2d 268, 271 (Ct. App. 2008) actually

solidifies the Appellant question if State objective emphasizing the error of including a factual argument in the Circuit Court Appeal, is to create confusion.

The "Motion to Amend Judgement" was Honorable Judge, Michael S. Gillespie job to answer the factual questions and the Circuit Court and Court of Appeal job was to observe matters of the law not matters of the facts. Just as Honorable Judge Edward Welmaker did at the Appeal against dismissal of the first Motion to Reconsider Judgement when ruled the dismissal unlawful, ignoring the factual issues of the Appeal.

**Argument ii.**

**Appellant:** Arraignment

During arrest at AnMed location, at the Pickens County Jail on February 21, 2013, at the Pickens Magistrate Court first trial held on March 11th, 2013, when pleaded "not guilty", the Appellant was never given a copy of the arresting nor supporting/incriminating documents. FRCR Rule 10 "Arraignment. *The defendant shall be given a copy of the indictment or information before being called upon to plead.*"

Appellant had no knowledge Detective Gardo had Angelika Tat written statement and the medical records, which he obtained at 12:42 prior to the arrest. Appellant is arrested that day after 15:00 at the hospital and transported to Pickens County Jail. Appellant could not request evidence did not know existed in the hands of Detective Gardo, invoking F.R.C.P. Rule 12, (b)(3)(4), (6)(c), Rule 16 or 17. However, Detective Gardo had the obligation to provide Appellant prior to the trial, copies of depositions, statements, evidence, held in his possession. California v. Trombetta 467 US. At 485.

**Respondent Brief:**

"First, there is no evidence Appellant makes a Rule 5 request prior to trial" &"Appellant offers no objection to the admission of the records being admitted as evidence "

**Appellant:**

FRCP Rule 17. Subpoena. (c)(1) A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court *before trial or before they are to be offered in evidence*. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them."

The Appellant, opposite to State v Landon, 370 S.C. 103 634 S.E 2d 660 (2006), had no intention to make Rule 5 and object to medical records introduction as evidence to the trial, which he subpoena prior to the trial, however were released to him only half way through the trial, while the prosecution had them already for 6 months and used them to obtain the arresting warrant. More so over, the Appellant key defense was in Anjelika Tat medical records. Appellant was looking to find the name of the AnMed employees that tended Anjelika Tat. Obviously the Counselor reference to McKissick v. J.F. Clerckley & Co., 325, S.C. 327, 344, 479, S.E. 2d 67, 75 (Ct. App. 1996) and State v. Dunbar, 356 S.C. 138, 142, 587 S.E. 2d 691,693-94 (2003) are out of context as are also: State v. Landon, 370 S.C. 103, 108, 634 S.E. 2d 660, 663 (2006), and Hyman v. State, 397 S.C. 35, 47, 723 S.E. 2D 375, 381 (2012).

During trial, the Appellant realized the prosecution had prior access to the medical information, while the Appellant subpoena medical record copy was delivered

at the trial and not prior to the trial, and Moved for Continuation to be able to subpoena MD Jeannette Kinsey and RN Michelle Ginn, in the ER on February 19/20, 2013, the AnMed employee which recorded the Appellant injuries and Anjelika's evaluation. The Appellant motion for continuation was denied without explanation. State v. Trotter 322 S.C. 537, 473 S.E 2d 452 (1996) cited by the Counselor is relevant because the Appellant subpoena the medical records back in March of 2013 but received them during the trial on August 2013.

However, SCRCP Rule 5 (a)(3) violation applies to the Magistrate Court proceedings because Appellant subpoena the medical records in March 2013 and did not receive them within the thirty (30) limited by the Rule 5 (a)(3), but during trial on August 2013.

**Respondent Brief:**

"Of course nothing in the record suggest the possibility of a Brady violation"...

"As to the motion to dismiss the indictment: State v. Cheeseboro,346 S.C.526,538,552 SE2d 300, 307 (2001),To establish a violation of due process, a defendant must demonstrate that the State destroyed the evidence in bad faith, or that the evidence had exculpatory value that was apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.id at 538-39 552 S.E.2d,307. The Counselor references a document (State v. Shawn Reaves, Appellate Case No. 2010-178486, labeled: "THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR. (rule 268 (d) (2)(Memorandum

opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved)" and should not be accepted by the court." The referenced case refers to evidences that were never produced, while case 2013A3910300068 refers to evidences Detective Gardo stated at the trial were produced and destroyed by him for not being useful producing an arrest or conviction. (Audio Recording)

The Counselor references State v Cheeseboro, 346, S.C. 526, 538, 552 S.E 2d 300, 307 (SC Supreme Court, 2001) " The State does not have an absolute duty to preserve potentially useful evidences that might exonerate a defendant " is actually a statement of The SC Supreme Court referencing 3 cases ( *Arizona v. Youngblood* 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988); *State v. Mabe,*306 S.C. 355,412 S.E.2d 386 (1991); *State v. Jackson,*302 S.C. 313, 396 S.E.2d 101 (1990)) in relation to evidence presented during the trial but emphasizes destruction on "good faith" aspect in the first two cases and the value of the destroyed evidence in the last, to prove the gun was marginal, only the connection between Cheeseboro and the bullets that killed three and wounded a third individual.

Mentioning State v Osborne, 291 S.C. 265; 353 S.E. 2D 276 (1987), the Counselor is pointing out that Magistrate Court Ruled on Appellant choice of words describing the events of the evening of February 19, 2013 and not considering the medical records and subsequently the experts on site at that night, vs. poor quality pictures, various and inconsistent statement on part of witnesses and Anjelika Tat. Medical records show numerous attempts made by Detective Gardo to determine

Anjelika Tat to sign incriminatory documents and to give him access to the medical records. Anjelika Tat confessed at a later time that before she agreed to sign she was taken by the detective Gardo, interpreter, victim advocate, somewhere around the hospital to convince her that the Appellant abandoned her at the hospital. The pictures taken by Detective Gardo at the County Jail on February 21, 2013 produced and documented by the arresting officer and beyond doubt of tempering, were of unmatched value, when related to MD Jeanette Kinsey notes in the medical records. In the context of the "late delivery" of the medical records, the withholding and destruction of the Appellant injuries pictures represents impairment of the right to a fair trail.

The Appellant believes the reference to the letter of the State District Attorney Office to the Anderson County Serif Office is of outmost relevance, because it shows not just the S.C. Code Ann. §§ 17-28-300 et seq. rules concerning DNA preservation in criminal case, but across the border the District Attorney Office concern with preservation of evidence and voluntary availability of those evidence to the Defense (""[t]he 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." "Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. United States v. Trombetta, 467 U.S. at 485")

The Appellant did not request a new trail or post-conviction relief as suggested by the Counselor referencing Gibson v. State, 334 S.C 515, 514 S.E 2d 320 (1999), Hayman v. State , 397 S.C. 35, 723, S.E. 2d 375 (2012), Porter v. State, 368 S.C. 378,

629 S.E. 2d (2006), nor changed the argument between the Circuit Court Appeal to the Magistrate final ruling of October 13, 2013 and the Appeal to the Court of Appeal of November 11, 2014 and is not changing it now.

The Appellant believes has brought light to the confusion from the mixup of the Magistrate Trial-Motion to Reconsider Judgement proceeds with the Appeal to the Circuit Court Judgement and has shown sufficient evidence concerning the errors of the law, related to, violation of SCRCP Rule 5 (c), FRCP Rule 10 and Brady v Maryland 373 U.S. 83 (1963) during Magistrate Court Trial of August 11th, 2013 to ask the Court of Appeal to reverse the conviction judgement affirmed in the Pickens Circuit Court.

## CONCLUSION

Chronological:

First, the trial court committed Rule 5 (a)(3) violation by not providing Appellant with the medical records *not less than 30 days after subpoena request* was made through the Magistrate Court Clerck office .

Second, the investigating officer committed Brady violation, violating Appellant right to a fair trial by withholding and destroying evidence that was collected before trial.

Third, the trial court did not properly consider evidence submitted by the State in the context of State withholding and destroying essential evidence. There were no direct witnesses to describe the February 19, 2013 incident between Appellant and Anjelika Tat, the AnMed personnel expert witnesses were not subpoena by the State and

the Appellant had not access to their name to include them in the witness list because the medical records were delivered during trial and not within thirty (30)days after subpoena request was made with the Central Magistrate Court Office .

Fourth, the trial court abused its discretion by denying Appellant continuation request for additional time to review medical records, provide evidence and call expert witnesses, incidentally directly involved in the events of February 19, 2013 that would have supported Appellant not guilty plea. Appellant whole defense was based on hard facts of the AnMed findings and AnMed depositions and not contradictory statements, non expert prosecution witnesses or suspicious translations.

The Appellant believes has shown sufficient evidence concerning the errors of the law, that may be referred as bad faith or sloppiness on the part of the investigating officer and the Magistrate Court during trial, but never the less errors of applying and interpreting procedure and the law, that prejudiced the Appellant right to a fair trial and entitle the Appellant to ask the Court of Appeal to reverse the conviction judgement affirmed in the Pickens Circuit Court.

With the outmost respect and thanks

for our patience and understanding,

Paul Ioan Tat

518 Fond Du Lac Drive

Central, SC 29630

864.207.3485

May 26, 2015

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

---

# DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

---

Unfortunately the documents the Respondent refer to be included in the Record on Appeal:

1. The Honorable Judge Michael S. Gillespie's Return of the Criminal Appeal, dated October 30, 2013;
2. The Honorable Judge Michael S. Gillespie's Return of the Criminal Appeal, dated September 24, 2014; and
3. The Honorable Judge Michael S. Gillespie's Magistrate's Response, dated September 24, 2014.

are not known to the Appellant nor the Pickens County Clerck Office meaning they were never mailed to the Appellant or filled with the County Clerck Office.
The Appellant believes the Respondent is honest in stating the above documents are of relevance but they do not exist, copies are not in the possession of the Appellant nor the County Clerck Office file. This is most unpleasant, since the Appellant already complained in both The Circuit Court and Court of Appeals for the lack or untimely response in the part of the Magistrate Court. I personally checked with the County Clerck Office when I assembled the documents for the Record on Appeal and there is not one response from Judge Michael S, Gillespie on the case file, not even the copy of

the one listed on the court record and delivered to Appellant and Judge Letitia Verding at July 25th, 2014 hearing. That "Second Magistrate Response" was two hundred and fifty (251) late as the appeal procedure stands. I have a copy and is listed in the Record but is not filed with he County Clerck Office and I am not sure is even relevant because it is not compliant with the Court Rules. I will address the question with the Court of Appeal Office regarding inclusion of documents that I had not seen or reviewed and were never properly filed and served.

Appellant: Paul Tat

Paul Ioan Tat

518 Fond Du Lac Drive

Central, SC 29630

864.207.3485

May 26, 2015