

PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS CNTY COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

Case No. 2014-001880

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APR 21 2016

SC Court of Appeals

State of South Carolina Respondent,

v.

Paul Ioan Tat Appellant

PETITION FOR REHEARING

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

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

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Arguments

1. The Appellate Court argue that the SCRMC Rule 18 was violated.

Answer: 1. The Notice of Appeal of October 23 2013 from Magistrate Court contains a brief summary to the Circuit Court stating that the Motion to Amend Judgement was denied without explanation. The Notice of Appeal was filed at the same time with the Petition For Appeal, on October 23 2013 with the Circuit Court and the Petition list the issues raised during the trial without having the benefit of an explanation from the trial Judge as to the reason of dismissing the Motion to Amend Judgement. The Appeal presents the case history with emphasis is on the legal violations R11 B,(1)(2)(3), R11 2,(2), R12 2.

2. The case was not addressed as *de novo*. The case had to be presented with its Magistrate Court history and arguments because the Magistrate did not give a reason for case dismissal. The appellant asked to correct the Magistrate Court

order based on violation of the law and not review of the case. The State Prosecutor referred his arguments to an issue prior addressed and corrected by the Circuit Court Honorable Judge Edward Wemaker. State v Johnson 396 S.C.

2. The right to a fair trial. Sate v. Brown 402 S.C.

Answer: - The issue was raised and ruled upon by the court trial. R14

- The issue was raised by the appellant in the Magistrate, Circuit and Appeal court R8 (g), R8 (j), R8 (m), R16 (1)(2)(3)(4), R19 (g)(j), R20 (i)(m), R22 2(1)(2)(3), R23 (3)(4)(5)(6), R27 (2)(5), R34 (4)(5)(6)(7)(8) (9), R38 (1)(2)
- The issues were raised in timely manner during the Magistrate Court hearing on August 31, September 3, 19, October 23, 2013, July 14 2014.
- The issues were raised to the trial court with specific reference to the Brady v. Maryland and Constitution Amendment 14th.
- Two Months prior to the trial, the appellant subpoena through the Central Magistrate's Court, Anjelika Tat Medical Records, to be able to obtain the name of the medical personnel that had contact and examined both the alleged victim and alleged aggressor the night of February 19, 2013 and subpoena them to the trial. The medical records were produced by the court during the trial, preventing the appellant's access to subpoena vital eyewitnesses to The State evidence and consequently the right to a fair trial.

- ☒ The Magistrate Court rejected appellant's Motion to Continue the case in order to assess The State evidences, The State witnesses list and statements, and be able to subpoena experts witnesses mentioned in those documents to support his non guilty position.
- ☒ The State represented by Detective Lee Gardo, under oath admitted he suppressed and destroyed evidence pictures made on February 21st, 2013, that showed the extent of the alleged aggressor injuries and objected to the appellant introduction of pictures taken by the appellant and preventing the appellant right to a fair trial.
- ☒ The State represented by Detective Lee Gardo, under oath admitted that he did not needed pictures of the alleged aggressor because he had enough evidence to obtain a warrant and criminal conviction. The State prejudiced the appellant chance to a fair evaluation of circumstances by the Honorable Judge Benjamin Dow and later to a fair trial with Honorable Judge S. Michael Gillespie court.

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Tables of Authorities

Cases

State v. Brown, 402 S.C.ii

Brady v. Maryland, 373 U.S. [83, 87 (1963).....ii,3

State v. Johnson, 396 S.C. 182.....ii

Constitutional Provisions

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

SCRMC Rule 18.....i

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

Statements of Issues on Appeal raised in Circuit Court

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 (RA) 7, Appeal, Oct 23, 2013, Page 2, (b);
2. February 21, Appellant is released on bail upon giving written statement and pictures of his bodily injuries are taken by Detective J. Gardo. RA 7, Appeal, Oct 23, 2013, Page 2,(b), RA 10;
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; RA 7, RA 13;
4. September 3rd, Appellant files Motion to Reconsider; Appeal Oct 23, 2013, Page 3(p);
5. September 11th, the Motion to Reconsider was denied for untimely filed reason. Magistrate Court Order of September 13th; RA 5, Appeal Oct 23, 2013, Page 3, (r);
6. September 19th, Appellant files the Motion to Appeal the Magistrate's Court Order of September 13th in the Pickens County Civil Court; Appeal Oct 23, 2013, Page 4, (s);
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, RA 4;

8. October 13th, Judge S. Michael Gillespie denies for the second time the Motion to Reconsider Judgement. No reason given; Magistrate Court Order Oct 14; RA 3;
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; RA 6,7;
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.RA 8
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 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 is attached. RA 2;
12. On August 1st, 2014 Judge Letitia H. Verdin affirms sentence; RA 1;
13. Appellant receive Judgement on August 5th, 2014.
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. The Notice on Appeal addresses only the issue was stated in the Magistrate Court Dismissal Order.

The Notice of Appeal was filed together with the Appeal which clearly refers to law violation and Magistrate Court errors and makes reference to the trial history. R6-12

B. The Circuit Court erred stating that in the appellant failed to address the basic requirements for appeal:

- The issue must have being raised and ruled upon by the court trial. R14
- The issue was raised by the appellant in the Magistrate, Circuit and Appeal court R8 (g), R8 (j), R8 (m), R16 (1)(2)(3)(4), R19 (g)(j), R20 (i)(m), R22 2(1)(2)(3), R23 (3)(4)(5)(6), R27 (2)(5), R34 (4)(5)(6)(7)(8)(9), R38 (1)(2)
- The issues were raised in timely manner during the Magistrate Court hearing on August 31, September 3, September 19, October 23, 2013, July 14 2014.
- The issues were raised to the trial court with specific reference to the Brady v. Maryland and Constitution Amendment 14th.

D. The Circuit Court failed to acknowledge de “Magistrate Second Response” it 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.

E. The Circuit Court failed to notice there is not in the Clerk of Court a file from Judge Michael S. Gillespie Response Brief nor a “Magistrate First Response” to the Appeal.

Arguments

A. Circuit Court Judge erred stating the Notice of Appeal should state the reason for the Appeal when there was no reason given in the Magistrate Court ruling.

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. 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. RA 8, TR. Page 4, prgh 2, Page 5, paragraph 2.

Based on SCACR Rule 203 d (1) (B), SCRMC rule 18 the notice of appeal to the Circuit Court does require to state the ground for appeal and the Notice for Appeal filed on October 23, 2013 complies could only be based on the Magistrate Court response to the Motion to Amend Judgement. The Court response gave no explanation nor reason for dismissal which is a violation of court procedure in its self. However, the appellant filed the Notice of Appeal and The Petition of October 23rd, 2013 at the some time and the R7, (2)(3) summarizes and argues the ground for appeal R11 B(1)(2)(3), R11 2(2), R12 (2).

B. The court erred accepted the Magistrate Second Response, a late and untimely answer to the Motion to Appeal Judgement Oct 23, 2013, the conviction was affirmed.

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 pointing the court to issues not listed in the Motion to Reverse Conviction Judgement 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 response/see to the Motion to Reverse Conviction Judgement filled on October 23, 2013.

Conclusions

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

Respectfully submitted,

April 21, 2016

South Carolina Courts of Appeal

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SC Court of Appeals

PROOF OF SERVICE

The Motion for Rehearing of the Appellant, 6 copies are hand delivered to the Court Of Appeals Clerk of

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April 21, 2016

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