

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Tanya A. Gee, Circuit Court Judge
Barbara Jo Wofford-Kanwat, Magistrate Court Judge

Appellate Case No. 2015-002576
Circuit Case No. 2015-CP-40-03354

The State Of South Carolina, Respondent,
v.
Gerald J. Nagy, Appellant.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

TABLE OF CONTENTS

Table of Contents2

Table of Authorities3

I. INTRODUCTION4

II. STATEMENT OF ISSUES ON APPEAL4

III. STATEMENT OF THE CASE.....4

IV. ARGUMENT10

V. SUMMARY AND PRAYER11

TABLE OF AUTHORITIES

Decisional Law:

Brady v. United States, 397 U.S. 742 - 1970.....10

United States v. Agurs, 427 US 97 – 19766, 10

SC v. Proctor, 358 S.C. 417 – 2004.....10

South Carolina Rules:

Rule 5, SCRCrimP5, 6, 10, 11

Miscellaneous:

Summary Court Benchbook - Criminal Section, H. (10), Paragraph 138, 11

**I.
INTRODUCTION**

This case appeals an order of the Circuit Court in *Motion Of Appeal From Magistrates Court*, Circuit Court case no. 2015-CP-40-03354, which was filed based on a Magistrate ruling in *Uniform Traffic Ticket*, #G-144808. This specifically involves three related items. The first is a ruling on Appellants *Motion To Compel, Or Exclude, Or Dismiss In The Alternative* in #G-144808. The second is a judgment rendered in #G-144808 on June 04, 2015. The third is a judgment rendered in 2015-CP-40-03354 on November 06, 2015.

Appellant prays that this Court consider the following Issues on Appeal, and reverse:

**II.
STATEMENT OF ISSUES ON APPEAL**

1. In the initial criminal trial did the Judge failure to properly consider and apply all Supreme Court of The United States and Supreme Court of South Carolina rulings on evidentiary disclosure?
2. In the initial criminal trial did the Judge failure to properly consider and apply all applicable Rules of Court and Summary Court Benchbook?
3. Does a Judge have the right to ignore their own rulings pertaining to evidentiary disclosure of specific material during the conduct of a criminal trial?
4. Did the Circuit Court Judge err in upholding by failing to consider these three previous items?

**III.
STATEMENT OF THE CASE**

On November 14, 2014, Appellant was issued a moving violation. (R___, Uniform

Traffic Ticket). On November 24, 2014, Appellant filed a discovery motion with the prosecution for items Appellant believed were material to a defense. (Pursuant to Rule 5, SCRCrimP / R___, Motion For Disclosure Of Evidence). Appellant received no response and on January 12, 2015, filed a motion to compel compliance. (R___, Motion To Compel, Or Exclude, Or Dismiss In The Alternative).

Appellant was present at court on February 03, 2015, the scheduled date of the initial trial. In a pre-trial meeting the prosecution was reminded of their failure to comply with discovery, the prosecution agreed to postpone, and to inform the court of the agreement. Appellant was unaware of the prosecutions plans to do no such thing, Appellant left the premises, and was tried in absentia. Based on the disingenuous actions of the prosecution and subsequent filings, Appellant was granted an Ishmael Order. (R___, Motion For Retrial).

Prior to trial the prosecution was allowed time in order to comply with discovery. On March 28, 2015, limited discovery material was produced by the prosecution. (R___, Reciprocal Rule 5 For Discovery And Disclosure Of Evidence). The prosecution provided almost none of the requested material and failed to address almost all of the items Appellant had requested. Further, the prosecutions evidence disclosure form did have areas for inclusion under discovery of many of the items requested, but these items were not noted nor were they produced. As part of the prosecutions production process, Appellant observed it was the intent of the prosecution to coerce an agreement that essentially stated the prosecution had fully complied with discovery, when they had not. As part of this disclosure document, and while not properly served, Appellant agreed to comply with the prosecutions request for disclosure. (R___, Notice To Court And Defendants Answer To Discovery).

On June 14, 2015, prior to the commencement of the second criminal trial, oral

arguments were heard on Appellants motion to compel. (R___, Motion To Compel, Or Exclude, Or Dismiss In The Alternative). The Judge issued a ruling prior to the commencement of the trial. (R___, Magistrate Hearing And Trial Transcript). During the course of the motion arguments, Appellant was often not allowed to fully present arguments nor fully answer questions proffered by the Judge, and was repeated cut off mid-argument by the Judge who would often then change the topic under discussion. At no point in the hearing did the prosecution itemize any part of the discovery requests which they had failed to address. Additionally, when Appellant tried to address the specific items requested which were material to the defense, the Judge focused on only one of the items and then did not allow for a full discussion of even a single request. Essentially, the Judge accepted the blanket statement from the prosecution that the discovery request had been fully answered with the prosecutions statements such as **"...I advised him of everything I have to..."** and **"...at that point in time, he was given everything he, the law required me to give to him."** (R___, Reciprocal Rule 5 For Discovery And Disclosure Of Evidence). Appellant did inform the Judge of US v. Agurs (United States v. Agurs, 427 US 97 – 1976). The ruling failed to consider this very relevant case and only referenced Rule 5. (Rule 5, SCRCrimP). Appellant then made a request to exclude certain evidence. The relevant portion of the exchange:

GERALD NAGY: Oh, yes Ma'am I don't have issues with that, but I would ask that anything that he not specifically present, that was specifically asked for be excluded from evidence.

JUDGE WOFFORD-KANWAT: Ok. Well at this point I believe that uh, that motion um, would be appropriate, given the concerns, but I don't have any indicator that he is presenting any evidence that he's not disclosed to you, so if that does arise during the trial you can object at that time. Ok?

On June 14, 2015, immediately after the motion hearing, the second criminal trial commenced. In the opening testimony of the prosecution, evidence that was requested under

discovery (speedometer certification) but not disclosed and should have been prohibited based on the ruling of the Judge, was introduced. (Pursuant to Rule 5, SCRCrimP / R___, Motion For Disclosure Of Evidence / R___, Magistrate Hearing And Trial Transcript). Appellant objected.

The relevant portion of the exchange:

GERALD [NAGY]: I would object to that testimony Your Honor based on his speedometer reading, if uh, if he is entering that in evidence.

JUDGE WOFFORD-KANWAT: Ok, in response..

TROOPER OXANDABOURE: (inaudible)

JUDGE WOFFORD-KANWAT: No response? Ok, over ruled, go ahead.

As part of the continuing testimony the prosecution then introduced evidence pertaining to RADAR evidence. Again, Appellant objected. Again, the objection was overruled. The relevant portion of the exchange:

TROOPER OXANDABOURE: [redacted] ...to initiate my radar to be able to get a reading on him because the radar doesn't work at the same speed.

GERALD NAGY: Objection Your Honor. Uh, he has not mentioned anything about radar up to this point and I would like all of that excluded from testimony.

JUDGE WOFFORD-KANWAT: Any response?

TROOPER OXANDABOURE: I advised him I got him on radar in the car.

GERALD NAGY: Your Honor, (it) was asked for specifically under the discovery agreement, or the discovery request, I received nothing about the radar, make, model, serial number, certification, service records, anything and he didn't even mention that he didn't use it or anything.

JUDGE WOFFORD-KANWAT: Can you point exactly to that in your motion for disclosure? The make, model, serial number.

GERALD NAGY: Yes Ma'am, uh, motion, item number 8, manufacture name, model, serial number, service record, owner's manual, operator's manual, etc. certification of traced (NIST) standard, chain or custody, making sure that he had that unit (inaudible) um, so I think that pretty much covered everything about the radar.

JUDGE WOFFORD-KANWAT: And how is that relevant.

GERALD NAGY: Well, he was just testifying that he allegedly confirmed my speed, he used the term, lock on 80, and I was just making a note that um, I'm not sure what lock on 80 is but um, if it's dealing with radar um, anything dealing with radar should be excluded from evidence, Your Honor.

JUDGE WOFFORD-KANWAT: Ok. Do you have anything you want to add?

TROOPER OXANDABOURE: No. When we talked the first time, I told him I got him on my radar, (inaudible) according to the Golden Eagle II at that time. Um,

GERALD NAGY: Your Honor...

TROOPER OXANDABOURE: (inaudible)

JUDGE WOFFORD-KANWAT: Mr. Nagy...

TROOPER OXANDABOURE: Um, I believe in Rule 5 it says stuff that's in my position uh, paperwork, the manuals and stuff, we don't have that manual and stuff, that's all

JUDGE WOFFORD-KANWAT: You don't have access to that?

TROOPER OXANDABOURE: That's CIA. The manuals for that are at our headquarters or at our shop, I'm sorry.

JUDGE WOFFORD-KANWAT: Ok.

TROOPER OXANDABOURE: Um...

JUDGE WOFFORD-KANWAT: I'm looking at Rule 5 when it's information subject to disclosure um, to me I think you're arguing that documents intangible objects are (inaudible) reports, examinations or tests would be my um, impression from your argument, Mr. Nagy and I think in my reading of the statute and applying it to your Rule 5 request I don't believe that this um, one of those things that should be excluded, so I'm going to deny the motion to suppress the information in my reading of Rule 5. Go ahead.

The prosecution continued to offer testimony in reference to the RADAR evidence and upon completion, the Judge elicited testimony from the prosecution in violation of prescribed procedures for the conduct of a trial in criminal cases. (Summary Court Benchbook - Criminal Section, H. (10), Paragraph 13.).¹ Appellant objected and was again overruled. The relevant

portion of the exchange:

JUDGE WOFFORD-KANWAT: And what's your training? What's your training for speeding?

GERALD NAGY: Objection Your Honor.

TROOPER OXANDABOURE: Uh...

JUDGE WOFFORD-KANWAT: Based on what grounds?

GERALD NAGY: I, he hasn't offered anything on that, and I don't think there's any ambiguity in what he is testified to so far.

JUDGE WOFFORD-KANWAT: So you're objecting to me asking that question? Is that my understanding?

GERALD NAGY: Yes Ma'am, and even him presenting that because again I did ask for any type training etc., other than his radar uh, training that he received in the academy um, there wouldn't be anything, I don't think, that should be included in evidence. I believe I have um, under number 6, of my motion, certifications, ongoing requirements related skills, talents, whatever um, I, I don't believe that should be included as evidence, in the trial, Your Honor, unless he brings it up at which time I will be able to cross examine him on that.

JUDGE WOFFORD-KANWAT: Ok, well I appreciate that objection um, magistrate rules allow for the judge in Pro Se cases, so in cases where there is not an attorney to ask questions when they are relevant. So I asked that question, I believe that was an issue, that document submitted to you um, through Rule 5 Brady and so I asked that question and I'm overruling your objection. Go ahead.

Appellant was found guilty.

On June 05, 2015, Appellant filed both a Notice Of Intent To Appeal and the Appeal.

(R__, Intent To Appeal / R__, Motion Of Appeal From Magistrates Court).

On July 31, 2015, the initial appeal hearing was scheduled and all parties were in attendance. The presiding Circuit Court Judge, Judge L. Casey Manning began to review the paperwork for the hearing and upon discovering that the Magistrate Judge had not yet filed a

1. During the trial, the judge should refrain from questioning the witnesses, unless the witness' response is ambiguous, in which case the judge may ask questions until the ambiguity is eliminated.

return, ordered a continuance. (R___, Continuance Order).

On August 24, 2015, the Magistrate Judge finally filed a return. (R___, Magistrates Return).

On November 06, 2015, the Appeal was heard before Circuit Court Judge Tanya Gee. Early in the hearing, Appellant presented the basis for issues on appeal. (R___, Common Pleas Appeal Transcript). This included the Brady v. US, and US v. Agurs. (Brady v. United States, 397 U.S. 742 - 1970) / United States v. Agurs, 427 US 97 – 1976). Joseph Berry, Esq. then presented for the State. The sole basis for his rebuttal was State v. Proctor (R___, SC v. Proctor, 358 S.C. 417 – 2004). The Judge upheld.

IV. ARGUMENT

1. **THE JUDGMENT OF GUILTY SHOULD BE REVERSED AS THE MAGISTRATES FAILED TO IN IT'S DUTY TO ABIDE BY APPLICABLE HIGHER COURT RULINGS.**

In US v. Agurs, SCOTUS stated in part:

In Brady the request was specific. It gave the prosecutor notice of exactly what the defense desired. Although there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable. (United States v. Agurs, 427 US 97 – 1976).

The ruling failed to consider this very relevant case and only referenced Rule 5. (Rule 5, SCRCrimP). (The Prosecution, for all intents and purposes, simply ignored virtually all of Appellants requests for production. (R___, Motion For Disclosure Of Evidence / R___, Notice To Court And Defendants Answer To Discovery). The Judge aided and abetted this by failing to allow Appellant to fully discuss items specifically requested under discovery.

2. THE JUDGMENT OF GUILTY SHOULD BE REVERSED AS THE MAGISTRATES FAILED TO CONSIDER AND APPLY APPLICABLE RULES OF COURT, AND COURT PROCEDURES DELINEATED IN THE SUMMARY COURT BENCHBOOK.

During the hearing on Appellants motion regarding discovery, the Judge simply focused on Rule 5, and then only in a very limited and overly narrow application thereof. (R___, Motion To Compel, Or Exclude, Or Dismiss In The Alternative / R___, Magistrate Hearing And Trial Transcript / Rule 5, SCRCrimP). While there was an initial hearing on Appellants discovery motion, Appellant was not allowed to fully present his arguments. During the conduct of the trial. the Judge solicited direct testimony from the Prosecution in direct conflict with instructions in the Summary Court Benchbook - Criminal Section, H. (10), Paragraph 13. When Appellant objected the Judge justified her actions with:

"Ok, well I appreciate that objection um, magistrate rules allow for the judge in Pro Se cases, so in cases where there is not an attorney to ask questions when they are relevant. So I asked that question, I believe that was an issue, that document submitted to you um, through Rule 5 Brady and so I asked that question and I'm overruling your objection. Go ahead." (R___, Magistrate Hearing And Trial Transcript).

The Prosecution was not Pre Se, rather the Appellant, and in ruling this way completely

perverted the intent of the nonbiased stance required of a Judge.

3. THE JUDGMENT OF GUILTY SHOULD BE REVERSED AS THE MAGISTRATES FAILED TO ABIDE BY HER OWN RULING PERTAINING TO DISCOVERY MATERIAL.

At the end of the initial motion hearing, the Judge ruled to exclude from evidence in chief at trial any material not specifically produced. (R___, Magistrate Hearing And Trial Transcript). During the conduct of the trial, when Appellant objected to the introduction of material that the Judge excluded in her own ruling, the Judge proceeded to overrule her own ruling.

4. THE JUDGMENT OF GUILTY SHOULD BE REVERSED AS THE CIRCUIT COURT FAILED TO CONSIDER ANY ITEM ON APPEAL OTHER THAN RULE 5

In her ruling, the Circuit Court Judge upheld the lower court ruling by stating in part:

"The Magistrate did not err in finding that the State had complied with Rule 5 and Brady, and evidence in the record supports the Magistrates findings..." (R___, Common Pleas Appeal Transcript).

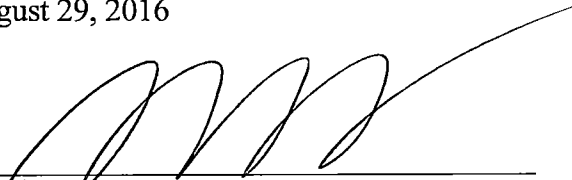
Further, while the State (Joseph Berry, Esq.) argued that some material was "...far too vague, far too broad...", both the State and the Judge failed to consider other items material to the Appellants defense. If the State thinks items are too vague and broad, then Appellant believes that position should have been raised by the Prosecution in the original hearing. Further, in the only case that the State cited, at least there was evidence available.

**V.
SUMMARY AND PRAYER**

In summary, it is the Appellants belief that in the Magistrate Court, the outcome seemed

predetermined. The attitude of "We'll give you a fair trial, then we'll hang you" seemed to be the prevailing theme. Appellant was not allowed to fully discuss his requests and was essentially told to be quiet whenever the hearing went in a direction that might be contrary to the above quoted attitude. When some discussion was allowed concerning a very limited number of requested items, the Prosecution mostly stated that requested material was not available. However, during the course of the trial much so-called "not available" material was introduced and the Judge allowed it to be presented over the Appellants objections and in conflict with her own ruling. This travesty was compounded with the judgment from Circuit Court. Therefore, Appellant respectfully requests that this Honorable Court reverse the original conviction from Magistrates Court, or remand for re-trial with an order disallowing any material specifically requested but not disclosed under discovery be excluded from use as evidence in chief at trial.

Respectfully submitted,
August 29, 2016



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CERTIFICATE OF SERVICE

I, Gerald J. Nagy, hereby attest and affirm that on this date, August 29, 2016, I served the within and foregoing INITIAL BRIEF OF APPELLANT, by having deposited a copy of the aforementioned document with the method and on the parties as indicated below:

Via postage prepaid United States Postal Service First Class Mail, article addressed to:

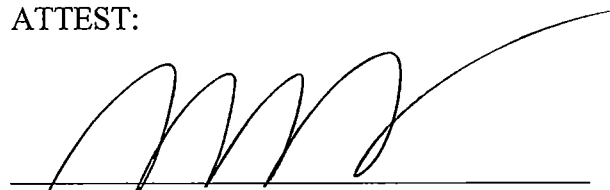
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ATTEST:



Gerald J. Nagy

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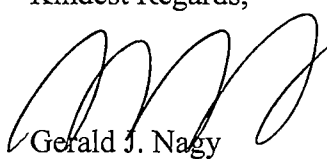
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Re: State Of South Carolina v. Gerald J. Nagy
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Dear Ms. Allen,

Enclosed is my INITIAL BRIEF OF APPELLANT. As mentioned in my previous correspondence, even though I am Pro Se, I believe, as much as possible, that submissions to any court be as correct in form as much as possible. If this filing is deficient in form, please let me know as soon as possible so that I may correct it as needed.

Kindest Regards,



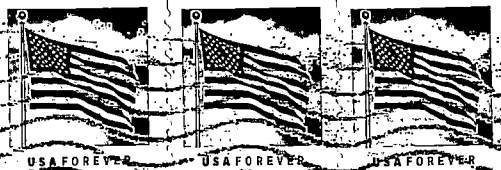
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