

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.

APPELLANTS INITIAL REPLY BRIEF TO
RESPONDENTS INITIAL BRIEF

Gerald J. Nagy, Pro Se
Mail Stop 149
911 Old Barnwell Road
West Columbia, South Carolina 29170
1-803-808-3438

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SC Court of Appeals

Come now the Appellant, Gerald J. Nagy, Pro Se, and hereby presents the following:

In Respondents Initial Brief there are numerous claims that Appellant summarizes as questions below:

1. Is State Trooper Oxandaboure (Prosecution, now Respondent) allowed to represent The State and prosecute the case in Magistrates Court?
2. Did the Honorable Judge Barbara Jo Wofford-Kanwat (Magistrate Court Judge) violate South Carolina law, comply with the various court rules, and in fact aid Appellant by questioning Respondent at trial?
3. Did Trooper Oxandaboure comply "sufficiently" with discovery in order for Defendant (now Appellant) to prepare for trial?
4. Were the Magistrate and Circuit Court judges rulings correct that there was full compliance with Rule 5 and Brady?
5. Did Appellant received a fair trial?

Appellant addresses these questions in order:

1. Is State Trooper Oxandaboure (Prosecution, now Respondent) allowed to represent The State and prosecute the case in Magistrates Court?

Apparently yes, but with some caveats. (Note that Appellant did not raise this issue on Appeal but rather Respondent, in his Initial Brief.) Appellant cannot locate any statute under South Carolina Code specifically allows for a State Trooper / non-lawyer to represent The State and prosecute a criminal case, but the earliest reference Appellant can locate does allow for this process. Under *State v. Messervy*, 248 S.C. 110, 187 S.E.2d 524 (1972), it states in part: **"...The patrolman's conduct (same as an attorney) is subject to the scrutiny of the magistrate at all**

times, and if the patrolman's conduct of the case is not proper it is the duty of the magistrate to make appropriate rulings...". However, Appellant could not find any statutes, case law, and the like, that permits any party, be it an attorney, a non-lawyer prosecutor, or a pro se defendant, to haphazardly ignore statutes, court rules, and United States Supreme Court rulings simply because it's convenient for them to do so.

2. Did the Honorable Judge Barbara Jo Wofford-Kanwat (Magistrate Court Judge) violate South Carolina law, comply with the various court rules, and in fact aid Appellant by questioning Respondent at trial?

Appellant agrees that the Magistrate did not violate any laws. (Again, note that Appellant did not raise this issue on Appeal but rather Respondent, in his Initial Brief.) Appellant does not agree she fully complied with the various court rules as Respondent contends. In Rule 2 - SCRMC it states in part: **"...These rules shall govern all civil suits in the magistrates court..."**. The original case was criminal, not civil. As such, Respondent claim that Rule 13, SCRMC, that states in part: **"... South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice..."** would not be relevant. Rather, Rule 101, SCRE states in part: **"... Except as otherwise provided by rule or by statute, these rules govern proceedings in the courts of South Carolina..."** which is relevant to the initial trial.

While Appellant is unsure if the Summary Court Judges Bench Book technically falls under "court rules", it does provide guidelines to a magistrates conduct during trial. Summary Court Bench Book - Criminal Section, H. (1), Paragraph 6, states in part **"...the fact that the proceedings lack many of the formalities required in the higher courts does not mean that various fundamental safeguards can be ignored in the magistrates' courts."** Summary Court

Bench Book - Criminal Section, H. (10), Paragraph 13 states: **"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."** As noted in both Appellants Initial Brief and Respondents Initial Brief, Appellant objected to the Magistrate eliciting testimony from Trooper Oxandaboure (acting as both prosecutor and witness) (Tr.Vol.I.p.17) The Magistrate essentially ignored Appellants objection.

3. Did Trooper Oxandaboure comply "sufficiently" with discovery in order for Defendant (now Appellant) to prepare for trial?

No. Prior to trial, Appellant served Respondent with a MOTION FOR DISCLOSURE OF EVIDENCE. Item Seven and Eight of that motion:

7. For all witnesses, or prospective prosecution witnesses listed in item #5 above, their employer name and address, date of employment, job title, position currently held, qualifications for that position, how they meet those qualifications, length of time in that position, positions previously held, training received, special training received, job related certifications currently held, job related certifications previously held, the name of the certifying entity for those certifications, requirements for those certification, when those requirements were originally met, ongoing requirements for maintaining those certifications, and any other special job related skills or talents they may possess, which is known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution, and which are material to the preparation of the defense or are intended for use by the Prosecution as evidence in chief at the trial, or in rebuttal.

8. The manufacturer name, manufacturer model, unit serial number, service records, owners manual, operators manual, operator training requirements, operator certification requirements, operation logs, Certification of trace to NIST standards, and chain-of-custody documentation indicating disclosure items were under the care and control of the Arresting Officer on the date of the alleged violation, for each and every mechanical, electrical, or electronic, speed detection and/or speed measuring device used for the purpose of gathering evidence prior to the above captioned Ticket being issued by the Arresting Officer, which is known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution, and which are material to the preparation of the defense whether or not this evidence is intended to be used by the Prosecution as evidence in chief at the trial, or in rebuttal.

In response to those two requests, Respondent produced exactly one item; his SMD (Speed Measuring Device) certification, and completely ignored everything else. In response to all other items in Appellants motion, Respondent supplied only one other item; what was purported to be a video of the alleged violation, but in fact was a video that began when Appellant was on an exit ramp (well after the alleged violation) and ended after Respondent issued the citation.

4. Were the Magistrate and Circuit Court judges rulings correct that there was full compliance with Rule 5 and Brady?

In *Brady v. Maryland*, 373 U.S. 83 (1963) it states in part: "**...Suppression by the prosecution of evidence favorable to an accused who has requested it 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...**". This concept was further clarified under *US v. Agurs*, 427 U.S. 97 (1976) which states 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....* (emphasis added).**" If Respondent did not have, or did not want to provide, any or all of the materials requested, he should have stated that in his response to discovery. If he did not have the requested material, he should have stated such. If he felt requests would not lead to discoverable material, he should have stated such. Appellant

requested very specific material that he believed were material to the preparation of the defense of the case. Instead of dealing with each item requested, Respondent simply ignored them.

As stated in Appellants Initial Brief, during the course of the motion hearing prior to trial, Appellant was often not allowed to fully present arguments nor fully answer questions proffered by the Judge, and was repeatedly cut off mid-argument by the Judge who would often then change the topic under discussion. The Judge and Respondent discussed things such as body cameras (Tr.Vol.I.p.5) and breathalyzer printouts (Tr.Vol.I.pp.9-11), which have nothing to do with this speeding charge. Also during the motion hearing, Appellant requested "**...that anything that's not been provided by Trooper Oxandaboure be excluded from evidence at trial...**" (Tr.Vol.I.p.13). The magistrate agreed and then contrary to her own order, allowed such items to be introduced at trial.

Addressing just one point of many possible, in the trial Respondent offered testimony as to the make and model number of the RADAR unit along with knowledge of the location of "**...paperwork, the manuals and stuff...**" "**That's CJA. The manuals for that are at our headquarters or at our shop. I'm sorry.**" (Tr.Vol.I.pp.15-16). These items were requested under discovery but were not produced under discovery, and should have been excluded from evidence in chief at trial (especially in light of the Magistrate having just ruled they would not be allowed into evidence). Appellant is at a loss to understand how this aligns with Rule 5 and Brady, but this was upheld as complying on initial appeal to Circuit Court.

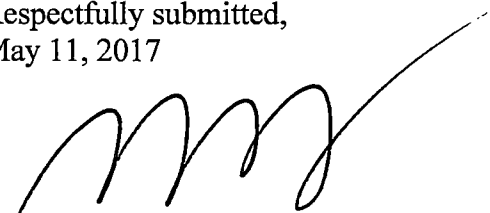
5. Did Appellant received a fair trial?

The best way for Appellant to answer that is to reiterate the "**SUMMARY AND PRAYER**" from his Initial Brief:

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.

In *Lutwak v. United States*, 344 U.S. 604 (1953), the United States Supreme Court stated in part "**The Constitution requires only that a defendant receive a fair trial, not a perfect one.**" Appellant is not seeking a perfect trial, just a fair one; or the reversal of the outcome of an unfair one.

Respectfully submitted,
May 11, 2017



Gerald J. Nagy
Appellant, Pro Se

CERTIFICATE OF SERVICE

I, Gerald J. Nagy, hereby attest and affirm that on this date, May 11, 2017, I served the within and foregoing APPELLANTS INITIAL REPLY BRIEF TO RESPONDENTS INITIAL BRIEF, by having deposited a copy of the aforementioned document with the method and on the parties as indicated below:

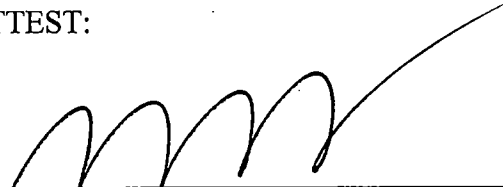
Via postage prepaid United States Postal Service First Class Mail, article addressed to:

Alan McCrory Wilson
South Carolina Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

William Schumacher, IV
Assistant South Carolina Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

Joseph Berry, Assistant Solicitor
Fifth Judicial Circuit Solicitors Office
P.O. Box 192
Columbia, South Carolina 29202

ATTEST:



Gerald J. Nagy

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