

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

v.

EDWARD PRIMO BONILLA,

PETITIONER

APPELLATE CASE NO 2016-001725

Appeal from Dorchester County

Honorable Doyet A. Early, Circuit Court Judge

Opinion No. 5702

PETITION FOR REHEARING

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SC Court of Appeals

Pursuant to Rule 221(a), SCACR, petitioner seeks rehearing because this Court may have overlooked the fact that adequate relief can be granted to petitioner on direct appeal for his attorney revealing the location of the decedent's body without his "informed consent." The remedy would be to suppress petitioner's statement to his attorney wherein he revealed the location of the decedent's body. His attorney would be precluded from testifying as a state's witness that petitioner revealed the location of the body, and therefore no stipulation in that regard could be entered into on the subject for the jury to hear.

This would protect the sanctity of the attorney-client privilege, and it would not punish the state. Further, there are times when the integrity of the criminal justice system – such as here with the attorney-client privilege – are more important than a party, here the state, gaining an advantage because the other party (the defense) made a tactical mistake. In short, the fact that petitioner revealed the location of the decedent’s body to his attorney, who then revealed it to the police, simply would not be revealed to the jury, the trier of fact in the case.

This Court should also grant rehearing and reconsider its finding that petitioner gave “informed consent” to his attorney to reveal the location of the body. As this Court will recall, defense counsel testified that he could *not recall* whether he discussed with petitioner disclosing the location of the decedent’s body to the police on May 8, 2015, or before that date. R. 9, l. 16 – 10, l. 23. Defense counsel offered that he *thought* petitioner *should have understood* the purpose of their meeting that day at the criminal investigative division located in a trailer behind the sheriff’s office. R. 10, l. 14 – 11, l. 21. McClure v. Thompson, 323 F.3d 1233 (9<sup>th</sup> Cir. 2003) on which the parties and the judge relied at trial for guidance makes clear that all of the negative ramifications of revealing the location of the body should be revealed to the client no matter how obvious they may seem to the lawyer.

Counsel Leiendecker admitted “before Edward and I met that day, *I did not have the information I provided to the Dorchester County sheriff’s office.*” R. 11, ll. 16-21. (emphasis added). Defense counsel said as a matter of “strategy,” it was decided to reveal to the police where the decedent’s body was buried in a wooded area that same day. R. 12, ll. 7-11. Thus, it is apparent the time for reflection – let alone discussion – was short.

Apparently, counsel Leiendecker did all the talking with law enforcement on May 8, 2015, and petitioner “did not speak to anybody in the sheriff’s office that I remember.” R. 13, ll.

1-4. Counsel met with petitioner in the sheriff's office conference room *for twenty to forty minutes*, and they "talked about the reasons **that may be helpful or beneficial** to his defense [to reveal the location of the body]." R. 13, l. 12 – 14, l. 7.

Leiendecker did not remember if any reasonable alternatives were discussed that he could have conveyed to petitioner other than revealing the location of the decedent's body: "I don't remember that. I remember that the discussion of *my strategy* for [and] the reason that it might be **beneficial** to his case if that's what you're talking about. **And there was no reasonable alternative to that purpose.**" R. 14, ll. 2-14 (emphasis added). Leiendecker made the disclosure to Captain Phinney. He said he felt petitioner was "on board with this disclosure and the reasons *why it was beneficial to him.*" R. 14, ll. 8-21. (emphasis added).

The judge then questioned Leiendecker:

Q. What were those beneficial strategies that you anticipated receiving if you made the disclosure?

A. Your Honor, *the only reason or purpose for this disclosure was so that an autopsy could be performed on the body*, and without the location of the body that would've been impossible. Without going further into any legal discussions or strategy, that was the purpose. Now, if Your Honor wants further detail and you direct me to answer that, I guess I would have to.

Q. Did you discuss with him the potential harm of disclosing the location of the body? I.e. what he would be faced with, charged with? What was he charged with at that time?

A. At that point, Your Honor, he was already charged with murder. And we did discuss how he had been charged with murder without the victim's body having been found. And as Edward and I discussed, it related to evidentiary issues provided in discovery from the Dorchester County Sheriff and/or Solicitor's office that included DNA locations that were solely under the control of Edward.

Q. So, specifically, what harmful consequences did you discuss with him of the disclosure, if any?

A. The obvious fact that it would be difficult or impossible for him to deny that he knew what happened to Ms. Pegram following their separation on the night in question when they had been together; that it would put him at the scene of what was alleged to be a murder; and that it would open him up even in a best case scenario to other charges including possible charge of desecration of human remains.

R. 15, l. 4 – 16, l. 7. (emphasis added).

Counsel offered “I was confident and felt firmly convinced that Edward was not only giving me truthful information, but that he understood I was going to reveal that to Captain Phinney, and that I had his consent to do it.” R. 17, l. 19 – 18, l. 6. Petitioner testified that he told Leiendecker “my story of what happened. That was in our first meeting. Petitioner said his second meeting was at the courthouse after he was charged with murder, and the third meeting was at the CID office at the jail the day the location of the body was disclosed. R. 21, l. 3 – 22, l.

8. The following occurred on direct examination of petitioner:

Q. And did that conversation, was it regarding the disclosure of the body?

A. It was -- from what I remember from that phone call conversation is I remember just giving my cell -- after I disclosed to him, told him the story of everything that happened, **I really was not aware that he was actually going to do go to the detectives and tell them, you know, I have this information.**

Q. All right. Well, pause a second because I want to focus on that telephone conversation, okay. We're gonna get to the other part.

A. Yes, sir.

Q. But tell me about the telephone conversation. What was the discussion there regarding disclosure of the body?

A. Okay. I remember coming out of my cell and going up to the front where the booking area is. Mr. Leiendecker made a very -- to the CO's there, made it clear that he wanted a private line; one that was not, you know, was not recorded, and he wanted me to speak to him in privacy. So they took me from the booking area to -- I would assume it was someone's office. So I talked to him on that line. *And basically told me the detectives were on their way to come pick me up to take me to the CID unit to disclose the location of the body.* During that conversation, I, you know, I was kind of distraught, you know, a little confused that this was already happening. **Because, honestly, I believe I did not give him permission to do this or was under the impression that he was going to do this. It was through that conversation that I found out that this was happening. And, you know, that's when -- I can understand through the conversation that we had that it was not something that I really had knowledge that was going to happen.**

R. 22, l. 11 – 23, l. 7.

\* \* \* \*

Q. Okay. Did he talk about the ramifications of disclosing the body?

A. **He just told me the benefits.** You know, when I think back, there were these benefits of what this was and, you know, pretty much I don't want to say he backed me into a corner to do this *because I already felt as if this was already in motion.* And for him to go there and tell him this and then me to say, "I didn't do this," or, you know, it just didn't seem -- it just didn't seem like the right thing that was going on, or ---

THE COURT: What was not the right thing?

THE WITNESS: For me just to back out and say, "I don't know where the body is." *If he's already gone to them and told them, you know, "I do know where the location is," and, you know, I felt like I had no choice to be honest, Your Honor.*

R. 24, l. 24 – 25, l. 14. (emphasis added).

Petitioner said he thought *he had been backed into a corner* because he told his attorney “If I can’t make you believe what happened with this situation then how am I going to be able to convince a jury.” R. 25, l. 16 – 26, l. 1. The following also occurred on direct examination of petitioner:

Q. And the question that I had for you was at any point in time did you agree with him that it was the best course of action?

A. *If I did agree with it, I was not aware that that came out of my mouth. Because like I said, I gave him the information of what everything happened because at the time he was my attorney. And, you know, just with you as well, I told my story, said everything that happened. And then after that, you know, it was probably maybe a week or so after that meeting, that's when I was getting called downstairs with the telephone conversation with him. And that's when, you know, he basically told me that the detectives were on their way to come get me.*

R. 26, ll. 2-14. (emphasis added).

On cross-examination, petitioner said he did not remember Leiendecker telling him the possible detriments to revealing the location of the body to the police. Petitioner repeated he felt like he had been backed into a corner by the defense counsel, and “I just felt like if he had already went to them and told them this, that it would just be bad for me to deny any of it after he’s already spoken to the detectives about this.” Petitioner also said by the time of his meeting where the location of the body would be disclosed, petitioner said: “I didn’t have many questions at that point.” Petitioner said that *it was only under the circumstances described above* that he was “on board” with disclosing the information. R. 28, l. 6 – 29, l. 15. Those circumstances, given a fair reading of this record, were that petitioner’s attorney told him the benefits of revealing the location of the body but did not adequately explain the negatives consequences where petitioner felt “backed into a corner” by his attorney’s strategy of revealing the location of

the body. Instead of any benefit, the solicitor ridiculed the strategy, turned it on its head, and told the jurors petitioner was attempting to game the system.

Since the trial judge erroneously ruled that petitioner's attorney could testify that petitioner revealed the location of the decedent's body to him, the remedy on appeal would have to be the granting of a new trial to petitioner because the error was not harmless. Once petitioner's attorney revealed the location of the decedent's body to the police, petitioner could not realistically deny that he was responsible for the decedent's death. That error most respectfully cannot be harmless since it cannot be said that petitioner's defense was otherwise "incredible." Furthermore, petitioner's entire trial strategy might have been different if the judge ruled that petitioner's attorney could not testify that petitioner revealed the location of the decedent's body—which was the same thing as the stipulation that was read to the jury at trial said. This Court should respectfully reconsider and grant rehearing on this issue.

Further, this court should also reconsider and grant rehearing as to its holding that the "automobile exception" to the warrant requirement applied to both vehicles, thereby making the search warrants superfluous, and unnecessary. Respectfully, this stretches the "automobile exception" to the point of breaking it.

Moreover, the Supreme Court's opinion in State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007), respectfully does not support extending the "automobile exception" to the seizing of a vehicle in another county and transporting it back to the county where the police department is located to be searched without a warrant. State v. Weaver involved the police in that case having probable cause to conduct the warrantless search of the suspect Jeep that was spotted nearby not long after the murder at a local bar. Upon the police finding the Jeep, it was apparent there had been an attempt to destroy evidence, given that the Jeep's interior was wet

and smelled of bleach. The Supreme Court held that, although the investigators could have searched the Jeep at that time, the fact they chose to impound the vehicle instead did not change the fact that they had probable cause to search it when they found it.

There was no evidence in this case that anyone was attempting to destroy or cover up evidence from either vehicle. The authorities did not have probable cause to seize the vehicles and transport them from Charleston county to Dorchester county for the convenience of the Dorchester County Police.

S.C. Code § 17-13-140 provides that magistrates shall have county-wide jurisdiction, not state-wide jurisdiction. Therefore, the magistrate in this case had the jurisdiction to issue a search warrant for any property located in Dorchester county, South Carolina. The magistrate did not have jurisdiction to issue a search warrant for property located in Charleston county. Therefore, since there was not probable cause to search the vehicles pursuant to the “automobile exception,” a search warrant issued by a judge in the county *where the property was located* was necessary.

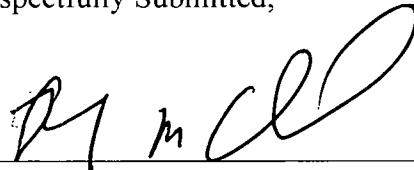
To hold otherwise would be reasoning that a magistrate in Dorchester county could issue a search warrant for property located in Pickens county, York county, or Richland county. That would most respectfully lead to absurd results, allowing each magistrate in South Carolina to have state-wide jurisdiction. Respectfully, the General Assembly could not have intended such a result when it enacted the search warrant statute, S.C. Code § 17-13-140.

Finally, petitioner did have standing to contest the proceeds of the “consensual search,” where that consent was given by petitioner’s employer, but the fruits of the search were going to be introduced at trial against petitioner. See State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). South Carolina, as McKnight makes apparent, has always provided standing for

defendants to challenge seized evidence where that evidence is going to be used against the defendant in a criminal proceeding. That is true so long as the defendant can show he had an expectation of privacy in the location or property sought to be searched. While the van searched was petitioner's work van, petitioner still maintained a reasonable expectation of privacy in that vehicle as was apparent where he was allowed to take the van home after work as if it were his own vehicle. In the final analysis as petitioner has argued, Dorchester law enforcement needed valid search warrants to search the vehicles, and the search warrants in this case were invalid because the Dorchester county magistrate did not have jurisdiction under the statute to issue them.

For the above reasons, petitioner respectfully requests that this Court grant rehearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

ROBERT M. DUDEK  
Chief Appellate Defender

This 14<sup>th</sup> day of January, 2020

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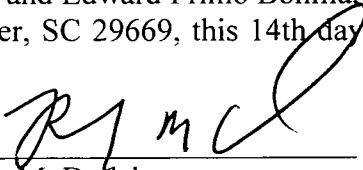
V.

EDWARD PRIMO BONILLA,

PETITIONER

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon J. Ben Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Edward Primo Bonilla, #369324, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 14th day of January, 2020.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE  
ME this 14th day of January, 2020.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: December 31, 2029.