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SC Court of Appeals

ENCLOSURES

ATTACHMENT

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

State of South Carolina,

Appellant,

v.

Louie Weathers,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Civil Action No. 20-CP-18-00905

Ticket Nos.: 20192401233408-10

Charges: DUAC 1st, Open Container, and
Seatbelt Violation

RESPONDENT'S OBJECTIONS TO APPELLANT'S PROPOSED ORDER

The Respondent, by and through the undersigned Counsel, objects to the Proposed Order and moves this Court to alter or amend the written Order. *See* Rule 59(e), SCRCP. Specifically, the Trial Court properly granted Respondent's Motion to Dismiss based on the prejudice created by the State's failure to timely disclose critical evidence prior to the scheduled bench trial. Respondent's arguments in support of this motion are as follows:

(1) Respondent incorporates by reference the arguments and transcripts presented in the Respondent's Brief as if fully set forth verbatim into this motion.

(2) The Proposed Order applies an erroneous standard of review, and this Court should not reverse the Trial Court's ruling because it would have decided the case differently. *See* S.C. Code Ann. § 14-25-105 ("There shall be no trial de novo on any appeal from a municipal court."); *City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013) (finding the Circuit Court is bound by the summary court's findings of fact if there is any evidence in the record which reasonably supports them in criminal appeals from the magistrate or municipal court).

(3) This Court is constrained by the “any evidence” standard of review, and there is ample evidence to support the Trial Court’s ruling. Specifically, the Trial Court thoroughly considered the briefs and oral arguments of both the State and Defense Counsel at two hearings and made its decision on a sound evidentiary basis by adequately explaining his specific finding.

(4) This Court erroneously found “there is no evidence in the record to support a finding [that] the delay by the Appellant in providing a response to discovery prejudiced Respondent’s right to a fair trial.” At the hearing on June 3, 2020, Defense Counsel addressed the prejudice created by the State’s admitted failure to timely disclose material evidence, and the Trial Court’s decision to grant the Respondent’s Motion to Dismiss:

You heard arguments of counsel, you had a motion to dismiss before you, you heard all the facts, you heard the chronology, the timeline related to the failure of the State to produce discovery, and you ruled on it. And it was within your discretion in accordance with Rule 5 of the South Carolina Criminal Rules of Procedure . . . [W]e sought a dismissal because that’s what justice demanded at the time. You heard our arguments. You didn’t continue the case, you had the discretion to continue it. You had discretion that they order to produce it, and recess and come back another day. You had those options. *We asked that the case be dismissed because of the deprivation of rights associated with the failure to produce the discovery.* And specifically, that Rule 5 states that you have the discretion to enter such other order as the court deems just and appropriate. . . . [Appellant’s Counsel] *understands that in order to properly prepare for trial, in order to present a case, in order to confront and cross examine witnesses*, we are entitled not only to all the evidence the State intends to produce that is incriminating as to the defendant and is helpful as to the prosecution’s case, but also all exculpatory information, that which may tend to prove innocence We have a right to those materials. *We appeared to try the case, but they hadn’t produced those materials. That put us at a distinct disadvantage in trying the case.*

(6/3/2020 Tr. 3, line 19 – 5, line 3) (emphasis added).

(5) This Court’s reliance on *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1993) is misplaced, as the *Wilkins* opinion is distinct from the facts presented here. In *Wilkins*, the

trial court denied the defendant's motion to dismiss pursuant to Rule 5, SCRCrimP, because Wilkins could not show any prejudice caused by the State's delay in complying with the discovery request. Unlike the Respondent in this case who appeared before the Trial Court for a bench trial, Wilkins "was in no different position on the date of disclosure then he would have been had disclosure been timely made." *Id.* The State's failure to timely disclose critical evidence until the date of trial deprived the Respondent of his right to a fair trial (specifically, his right to confrontation of witnesses, compulsory process, meaningful opportunity to present a complete defense, and effective assistance of counsel).

(6) This Court's reliance on *United States v. Hastings*, 126 F.3d 310, 317 (4th Cir. 1997), is also misplaced because it is not controlling authority on the issue before this Court. *Cf. State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000) (burden-shifting on element of prejudice from prosecutorial misconduct); *Cf. Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999) (holding "a *Brady* violation occurs when: (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.") (citation omitted).

(7) This Court's finding that the State's violation of Rule 5, SCRCrimP, "was unintentional and there is no evidence in the record of willful misconduct by Appellant" should have no effect on this Court's review of whether there is any evidence to support the Trial Court's decision to grant Respondent's Motion to Dismiss. *Cf. Gibson*, 334 S.C. at 528, 514 S.E.2d at 326-27 (finding "[i]t does not matter whether the prosecutor's misconduct in failing to reveal *Brady* evidence is due to negligence or an intentional act because a court may find a *Brady* violation irrespective of the good faith or bad faith of the prosecutor. *Brady* is based on a sense of fairness, and a belief that society gains when a defendant is accorded a fair trial. The focus is not on the

misconduct of the Prosecutor, but on the fairness of the procedure.”) (citations omitted).

(8) This Court’s finding that Respondent did not communicate the State’s violation of Rule 5, SCRCrimP, and his intent to move for dismissal prior to the bench trial should have no effect on this Court’s review of whether there is any evidence to support the Trial Court’s decision to grant Respondent’s Motion to Dismiss. Notably, Respondent had no obligation to inform the State of its admitted failure to timely comply Rule 5, SCRCrimP.

(9) This Court’s finding that “the Magistrate had several less severe sanctions available under the circumstances” should have no effect on this Court’s review of whether there is any evidence to support the Trial Court’s decision to grant Respondent’s Motion to Dismiss. Notably, the Trial Court was fully aware of these less severe sanctions, as this specific issue was raised by Appellant, and the Trial Court still decided to grant the motion to dismiss.

/s/ John H. Guerry

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August 3, 2020
Charleston, SC

ATTACHMENT

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF DORCHESTER) COMMON PLEAS
4
5 THE STATE,)
6 Plaintiff,)
7 Vs) CASE NO. 2020-CP-18-00905
8 LOUIE C. WEATHERS,)
9 Defendant)

JULY 20, 2020

(VIA WEBEX)

HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

BY: MARK S. MOORE, ESQUIRE

Attorney for the Plaintiff

BY: JOHN H. GUERRY, ESQUIRE

Attorney for the Defendant

KATHERINE A. SPIRES

REGISTERED PROFESSIONAL REPORTER

1 THE COURT: Looks like everybody's here. All right.
2 Let me tell you what I have reviewed. I have reviewed
3 briefs submitted by each side and I have looked at the
4 return. So, on behalf of the State? I'm listening.

5 MR. MOORE: All right. Thank you, Your Honor. We
6 believe that the magistrate was incorrect in ruling for
7 a dismissal. Obviously, Rule 5 and *Brady* are intended
8 to insure the Defendant has the right to a fair trial.

9 In this case, we believe the Court should have
10 weighed and failed to weigh the reasons for the delay
11 and whether they were intentional or in bad faith, the
12 degree of prejudice that would have been suffered by the
13 Defendant, if any, and whether or not a less severe
14 sanction would have remedied the prejudice or
15 wrongdoing.

16 From the State's position, we don't believe there
17 was any intent or bad faith in the delay. Essentially,
18 what happened was, they had an initial hearing scheduled
19 on December 18th. They had sent discovery to the Post
20 back on December 9th. They were mountain deep into that
21 discovery request when the hearing was set, so they
22 decided to come back and continue the hearing for
23 another date.

24 In between would have been the violation where it
25 would have lapsed over the 30 days. And nobody is

1 disputing the State made a mistake and this fell through
2 the cracks and didn't get there in time. The trooper
3 didn't know that --

4 THE COURT: Yeah, I think there was a slip between
5 the lip and the cup is of at least the position of the
6 State because Solicitor's Office had taken over the task
7 of transmitting discovery to counsel; is that right?
8 And this was the beginning of that process?

9 MR. MOORE: They were moving towards that. You
10 know, in looking back at the record, it looks like the
11 trooper had sent it to her supervisor not directly to
12 the Solicitor's Office, but they don't have a
13 post-headquarters in Dorchester County. So instead of
14 having everybody go out to Walterboro, they were trying
15 to find another way of doing it. And, unfortunately,
16 this was during that period of transition.

17 Irrespective of what the reasons for the delay were,
18 we concede there was a delay. But, again, you know, our
19 position was that this was a bench trial, that this
20 could easily have been continued, that we could -- if
21 there had been notice to us that he had not received the
22 discovery before that, maybe that could have been cured
23 or the case could have been continued before he came all
24 the way out. But it came out with the typed written
25 motion to dismiss instead of emailing the trooper which

1 they had emailed her the discovery on the 18th already.
2 Or just calling or letting somebody know that they still
3 hadn't gotten it. And so then they came in, asked to,
4 you know, whether they could get this deal on it. When
5 they didn't, they filed the motion and the Court went
6 with that motion.

7 And we just, again, you know, not arguing that we
8 were wrong in the delay, simply stating that this was a
9 little bit beyond the pale as a dismissal goes. Because
10 there simply wouldn't have been any prejudice to the
11 Defendant in this case. We could have had it set it for
12 another date. If he had even been jammed up into a
13 position where everybody was arguing he had to go
14 forward, he could have requested a jury trial.

15 So, you know, from our standpoint, again, we're just
16 -- our concern is that the dismissal was harsh under
17 those circumstances. A continuance could just as easily
18 have remedied the prejudice if there had been any at
19 that point. And, again, this has kind of been framed in
20 a way where they were there to go to trial that day.
21 But, again, in a bench trial situation, they could have
22 made that request and that would not have gone forward.

23 If they were serious about trying the case that day,
24 somebody would have thought would have called and said
25 we don't have the discovery yet and you're past the 30

1 days. It's January and we're past that point. And we
2 just never got any indication of that.

3 The first thing we -- and I'm speaking for the
4 trooper, I wasn't involved at that point. But the first
5 time the trooper realized prior to that January 29th
6 hearing was at the hearing itself that they had not
7 gotten that discovery.

8 THE COURT: Got it. All right. Yes, sir, the rest
9 of the story.

10 MR. GUERRY: Yes, thank you, Judge. We are here to
11 determine whether it was an abuse of discretion which
12 requires an error of law or whether or not there was any
13 evidence. There was no evidence for the trial judge to
14 support his decision.

15 The State has conceded that there's no error of law
16 to dismiss a case for a Rule 5 violation. So, there's
17 no question there's no error of law here. There's also
18 no question that there was plenty of evidence for Judge
19 Stephens to support his decision of a dismissal. There
20 was a Rule 5 violation. She -- we had a mutually agreed
21 upon trial date. We were serious about trying the case,
22 Judge, if -- and it's our position that, yes, there were
23 pretrial discussions with the trooper which we believe
24 are irrelevant and inadmissible to this position. But
25 it only supports our position that we -- she was dead

1 set, she disregarded, objected, denied any kind of
2 pretrial resolution. She decided to move forward with
3 the trial date, so we were left with no choice but to
4 proceed through.

5 Now, it's not our job to request a continuance. If
6 the trooper wanted to request one, she could have. She
7 did not. The record confirms she made no continuance
8 request. We were therefore left with two options to be
9 it a proper advocate for the client, we can move to
10 dismiss because we have had a clear *Brady* violation. Or
11 we can move in limine to have the stuff -- to have it
12 deemed inadmissible and then the judge would have then
13 said, not guilty. There's nothing to prosecute.

14 So to clearly, it's on the trooper here for not only
15 the Rule 5 violation which that they conceded to. She
16 decides to move forward with the bench trial, so here we
17 are. Here we are. So to not have discovery, video, any
18 kind of evidence to support the case is obvious
19 prejudicial -- it's obviously prejudicial to the client.

20 THE COURT: Well, let me ask you this question. If
21 the State had not agreed with the Defense to a
22 continuance on the 18th of December, wouldn't you have
23 had to go the trial on that date without any discovery?

24 MR. GUERRY: Judge -- okay. So, first of all, the
25 December 18th, we requested the continuance, not the

1 trooper. She had not -- she was not in violation at
2 that point of any Rule 5 because 30 days had not passed.
3 We just filed the appearance a week before.

4 THE COURT: I know. But if the Court -- on that
5 occasion, if the Court had denied the continuance, you
6 would have been put in a position of trying the case;
7 correct?

8 MR. GUERRY: We would have. That's correct.

9 THE COURT: Okay. Without any discovery?

10 MR. GUERRY: Right.

11 THE COURT: Okay. All right.

12 MR. GUERRY: But we didn't have to -- we both before
13 we entered the courtroom, Judge, the trooper and I both
14 agreed at that time --

15 THE COURT: I know. I mean, I understand that there
16 was certainly cooperation on both sides.

17 MR. GUERRY: Right. And we wouldn't have had any
18 grounds at that point to move for a dismissal. Because,
19 you know, the judge -- the trooper still had time to get
20 us what she needed. And we were working with her at
21 that point and we both agreed let's have a date to try
22 this thing.

23 THE COURT: Right.

24 MR. GUERRY: You know, Judge, we rely on our brief
25 and we rely on the transcript and what's before Judge

1 Stephens. We don't think there's an abuse of
2 discretion. There's a -- concede there's no error of
3 law. The evidence supports a dismissal and we standby
4 that.

5 THE COURT: Okay.

6 MR. MOORE: Your Honor, may I respond to that?

7 THE COURT: Sure.

8 MR. MOORE: Just real quickly. First of all, we
9 don't disagree that under Rule 5 that the judge has a
10 catchall that allows him to basically rule anything that
11 he deems appropriate. But the case law and I point to
12 that Hastings case that I've submitted too and also the
13 Wilkins case support that you -- in order to have a
14 dismissal, you must show that there was prejudice,
15 actual prejudice, you know, that it couldn't have been
16 cured in a less drastic fashion.

17 Additionally, we -- I would dispute this issue of
18 the trooper pushing to go forward with the trial that
19 day. They went into the courtroom, it's -- you got the
20 transcript and it picks up once the hearing starts. But
21 prior to the hearing on the audio, the trooper says that
22 the Defendant has a motion and she's got three wrecks to
23 go to in Dorchester County, so they need to have this
24 motion heard before she can leave and so they go forward
25 with the motion. This was a motion hearing. I don't

1 think she was intending to go forward with a bench trial
2 and I don't think it would have been reasonable for
3 anybody to expect them to go forward under those
4 circumstances.

5 THE COURT: Did the State have any notice of the
6 motion prior to the hearing?

7 MR. MOORE: No, Your Honor. If we had known they
8 were making a motion to dismiss, we would have known
9 they didn't have the discovery.

10 THE COURT: Right. Okay. And, Mr. Guerry, is there
11 any evidence that this was willfulness on behalf of the
12 State? This prosecutorial misconduct, if you will.

13 MR. GUERRY: Well, she concede -- she confirmed
14 receipt of the discovery and over 42 days before the
15 trial date.

16 THE COURT: Yes. But is there any evidence or does
17 the Defense maintain that there was prosecutorial
18 misconduct? Any sort of willful and intentional conduct
19 on behalf of the State?

20 MR. GUERRY: Judge, I don't know the intent behind
21 the mistake. I don't know if it's our job to present
22 any willful misconduct. If the State has presented that
23 there is none, we disagree. We don't see why the
24 officer shouldn't be compelled to comply with the rules
25 like we all are. I mean, we're proceeding through to a

1 bench trial. I don't understand the State's position
2 that it's not our intent to go forward. We have to be
3 prepared on the trial date to move forward.

4 THE COURT: Well, there could have been a motion to
5 compel, but there wasn't a motion to compel. It was
6 filed as a motion to dismiss.

7 MR. GUERRY: Right. Because we haven't -- that's
8 the -- I'm fully entitled to do that. And based on what
9 we were --

10 THE COURT: No question about that. Is there --
11 should the Defense have served that motion on the State
12 prior to the hearing?

13 MR. GUERRY: You know, I don't think we're required
14 to. But if there is a rule that says otherwise, I will
15 concede to it. But I don't think we're required to.

16 THE COURT: Got it. All right. Anything further
17 from anyone?

18 MR. MOORE: No, Your Honor.

19 MR. GUERRY: No, Your Honor.

20 THE COURT: All right. Thank you very much. Let me
21 just say that I'm going to send this case back for
22 trial. I do think that -- that it is an abuse of
23 discretion. I am going to reverse it for the following
24 reasons:

25 I do not believe that there was any demonstrated

1 prejudice. That a motion to dismiss is an extraordinary
2 remedy and the case law bears that out.

3 I am concerned that -- that there was a couple of
4 things. That there wasn't notice to the State with
5 regards to the motion to dismiss because that would have
6 elucidated the fact that apparently this -- there
7 doesn't appear to me to be any evidence of any type of
8 willful conduct on behalf of the State. It appears that
9 -- and I say that on the basis of the initial
10 cooperation to continue the trial to allow for discovery
11 and to accept the sending of an email to -- with regards
12 to the discovery request. And both sides were there for
13 a trial. And both sides conceded that it was
14 appropriate to have a continuance. That shows certainly
15 cooperation on behalf of the State.

16 If the motion to dismiss had been sent, it would
17 have certainly given the State notice of the position of
18 the Defense and would have given the State notice that
19 in fact the discovery hadn't been sent.

20 There was no motion to compel. And -- which
21 typically occurs prior to a motion to dismiss. There
22 was no motion to compel filed.

23 It would have been a simple matter for the Court to
24 grant a limited continuance to allow for the discovery
25 to have occurred. Certainly, the documentation it

1 appears presented to the Court was that there was a
2 process that was being put in place to allow for
3 troopers to have some assistance from the Solicitor's
4 Office or from others to turn over the discovery. And
5 it does not appear that there was anything ongoing other
6 than a procedure that was put in place and quite
7 frankly, a falling through the cracks.

8 If there had been communication, even so much as
9 service of the motion to dismiss, certainly would have
10 been a situation, if not remedied, certainly there would
11 be some indication of some willfulness on behalf of the
12 State.

13 Obviously, the dismissal of an action is an
14 extraordinary remedy, and, Mr. Guerry, you've pointed
15 out that you could have -- the Court could have excluded
16 the evidence which wasn't provided. That would have
17 been a remedy. The Court could have ordered attorney's
18 fees to be paid. There were many other remedies,
19 sanctions, if you will, that were bypassed and the
20 Court, if you will, went to the most extreme remedy and
21 that of course is the motion to dismiss.

22 So having considered all of these matters, I find
23 that absolutely the Defendant is entitled to discovery.
24 And I find there was no evidence of any willful conduct
25 on behalf of the prosecution nor was there evidence of

1 prejudice on behalf of the Defense. Particularly with
2 the Defense with the first trial date, the Defense would
3 have had to go forward without any discovery. Because
4 the motion had not been made timely prior to the first
5 time set for trial.

6 So considering all of these matters and considering
7 the fact that the Court did not entertain any lesser
8 action other than a dismissal, could have been a
9 continuance, there could have been an exclusion of
10 evidence, and the Court -- could have been granted
11 attorney's fees for Defense counsel's trouble to come
12 all the way to St. George for a trial. There are many
13 other sanctions that could have been considered that
14 were not considered. And the most extreme sanction was
15 the one adopted by the Court. And under these
16 circumstances, I do believe there was an abuse of
17 discretion and an error of the law.

18 And if you would draft me an order, please, sir.
19 Mr. Moore?

20 MR. MOORE: Yes, ma'am. Yes, Your Honor.

21 THE COURT: All right. Noting the Defense's
22 exception thereto. And thank you so much.

23 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Dorchester County, South Carolina, on the 20th of July, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 20, 2020

Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

ATTACHMENT D

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

State of South Carolina,

Appellant,

v.

Louie Weathers,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Civil Action No. 20-CP-18-00905

Ticket Nos.: 20192401233408-10

Charges: DUAC 1st, Open Container, and
Seatbelt Violation

RESPONDENT'S BRIEF

This is an appeal by The State of South Carolina ("Appellant") from the Final Order issued by the Honorable Victor G. Stephens, Dorchester County Magistrate, denying Appellant's request for reconsideration of the dismissal of the above-referenced charges brought against Louie Weathers ("Respondent") by Lance Corporal K.C. Davis of the South Carolina Highway Patrol, on November 20, 2019. Based upon the record contained within the filed Return of Appeal, and for the reasons set forth in detail below, the Final Order dismissing the above referenced charges against Respondent should be affirmed.

PROCEDURAL BACKGROUND

On November 20, 2019, South Carolina Highway Patrol Officer K.C. Davis arrested and jailed the Respondent on the charges of Driving with an Unlawful Alcohol Concentration, Open Container, and a Seat Belt Violation. Respondent's initial court date was scheduled for December 18, 2019. On December 9, 2019, undersigned counsel filed a notice of appearance and served Trooper K.C. Davis with Respondent's Request and Motion for Production (pursuant to Brady v

Maryland) and his General Request for Discovery and Production via U.S. Mail to Trooper Davis' headquarters, located at 100 Mable T. Willis Blvd., Walterboro, S.C. 29488 (See Magistrate's Filed Return of Appeal at pg. 14). Despite being properly served with Respondent's discovery requests, Trooper Davis appeared at the initial Court hearing on December 18, 2019, without having provided any responses to said discovery requests. In fact, Trooper Davis denied ever being served with a copy of Respondent's discovery motions. Therefore, in an effort to accommodate and permit additional time for Trooper Davis and the State to comply and respond to Respondent's discovery requests, counsel and Trooper Davis agreed to continue the trial date to the next available term of Court on January 29, 2020. That very same day, as an additional gesture of good faith and civility, counsel prepared an e-mail to Trooper Davis on December 18, 2020, attaching copies of Respondent's previously served Request and Motion for Production (pursuant to Brady v Maryland) and his General Request for Discovery and Production. Trooper Davis acknowledged and confirmed receipt of Respondent's e-mail attaching the discovery motions. (See Magistrate's Filed Return of Appeal at pgs.19-20).

As the records reflects, Respondent, with counsel, appeared before the Honorable Victor Stephens on January 29, 2020 for the trial of this case. In spite of receiving Respondent's discovery requests on December 18, 2019, from that date through the date of the trial, which was set by mutual agreement, Appellant received nothing. As such, in that Appellant had still not responded or complied with Respondent's discovery requests and disclosures, as required per Rule 5(a)(3) of the South Carolina Rules of Criminal Procedure (SCRCP), and given Appellant's desire to proceed forward with the trial as scheduled, Respondent moved to dismiss the charges. Following lengthy

oral arguments addressing in detail the actual prejudice suffered by Respondent due to the Appellant's blatant noncompliance, the trial court granted Respondent's Motion to Dismiss.¹

On February 4, 2020, Appellant filed a Motion for Reconsideration. On June 3, 2020, wherein Respondent's counsel again addressed in specific detail the detrimental and prejudicial effect of Appellant's failure to comply with the pre-trial disclosure requirements afforded to him and mandated by the South Carolina Rules of Criminal Procedure, the Honorable Victor Stephens denied Appellant's Motion for Reconsideration. The instant appeal was filed by the Appellant on June 10, 2020.

STANDARD OF REVIEW

In a criminal appeal from the municipal court, the circuit court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception. Town of Mt. Pleasant vs. Roberts, 713 S.E.2d 278 (2011); see also S.C. Code Ann. § 14-25-105 (Supp.2010) ("There shall be no trial de novo on any appeal from a municipal court."). As such, "[i]n criminal appeals from the municipal court, the circuit court is bound by the municipal court's findings of fact if there is any evidence in the record which reasonably supports them. See City of Greer v. Humble 742 S.E.2d 15 (S.C. Ct. App. 2013). On review, the appellate court is limited to determining whether the trial judge abused his discretion. State v. Garriss, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011) (citations omitted).

¹ Counsel for Appellant asserts that a request and/or motion for continuance was an available recourse. However, a motion and/or request for a continuance was in fact not made by Trooper Davis. (See Transcript of Hearing, attached).

DISMISSAL OF THE CASE WAS NOT AN ABUSE OF DISCRETION

The standard of review governing this Court's decision is determining whether there was an abuse of discretion by the trial court. As recently defined by the South Carolina Court of Appeals, "an abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." City of Greer v. Humble 742 S.E.2d 15 (S.C. Ct. App. 2013).

In this matter, Appellant does not contend that a dismissal for violation of pre-trial disclosure requirements mandated by Rule 5 of the South Carolina Rules of Criminal Procedure and Brady v. Maryland, 373 U.S. 83 (1963) is an error of law. Further, Appellant does not contend that there is no evidence supporting the trial court's finding that a pre-trial disclosure violation occurred. Rather, as supposed grounds for appeal, Appellant asserts that reversal is warranted because dismissal was too severe a sanction and that a more appropriate remedy under Rule 5 was available for the trial court. Appellant further argues that Respondent suffered no prejudice. (See Appellant's Notice of Appeal at pg. 2) This argument (that although the trial court had authority to dismiss, but should not have) falls woefully short of satisfying the abuse of discretion standard, thereby rendering the instant appeal baseless.

As reflected in the record contained within the filed Return of Appeal, the evidence wholly supported the trial court's dismissal for Appellant's failure to comply with the requirements set forth in Rule 5 of South Carolina Rules of Criminal Procedure. The dismissal of Respondent's charges was not only entirely appropriate, but completely within the discretion of the trial court and confines of the law, pursuant to the plain language of Rule 5(d)(2)(4), which provides in pertinent part:

[I]f at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the

party from introducing evidence not disclosed, *or it may enter such other order as it deems just under the circumstances.*

S.C. Crim. Rule 5(d)(2)(4) (Emphasis added).

Our trial Courts regularly dismiss Driving Under the Influence (DUI) cases wherein the prosecution fails to produce video recordings of the arrest incident site, and our appellate courts have routinely affirmed said dismissals. See State v. Taylor 411 S.C. 294, 301 (Ct. App. 2014)(holding dismissal of DUI charge is an appropriate remedy if the offer fails to produce video recording from incident site); see also State v. Branham, 708 S.E.2d 806 (Ct. App. 2011); City of Rock Hill v. Suchenski 646 S.E.2d 879 (2007) These dismissals are based upon the prosecution's failure to comply with S.C. Code § 56-5-2953, which is a violation of SCRCP Rule 5. What transpired in this case is analogous; namely, that Appellant failed to comply with the aforementioned discovery motions and, in doing so, failed to provide the incident site videos as well as any and all other discovery materials. The mandates regarding discovery and disclosures by the State per Rule 5 (SCRCP) exist for a reason, to ensure that each and every Defendant is afforded his due process and procedural rights, in order to properly prepare for and engage in a trial. Appellant's knowing failure to comply with these mandates deprived the Respondent of his rights and consequently put him in a position that he could not fairly proceed with the trial of the case.

As confirmed by the attached transcripts, the record is abundantly clear that Respondent's counsel set forth in detail the extreme prejudice suffered by the Respondent due to Appellant's noncompliance with the pre-trial disclosure requirements mandated by law. The trial court was presented with irrefutable evidence that nothing was produced by Appellant from the Respondent's arrest on November 20, 2019, through the mutually agreed upon trial date of January 29, 2020. No Brady Materials. No incident site video. No breathalyzer video. No Record of Arrests and

Prosecutions (RAP Sheet). No incident reports. No booking reports. Put simply, there had been absolutely no response to the Respondent's Discovery Motions, despite Trooper Davis acknowledging receipt of the discovery requests over 42 days prior to the agreed upon trial date. The trial court considered the Appellant's noncompliance, and considered the fact that Appellant had not provided any potentially exculpatory or incriminating evidence, as mandated by Rule 5 and the applicable case law. The trial court considered and determined that Appellant's failure to fully apprise Respondent of the State's allegations and evidence relied upon in the prosecution and trial of the case would cause obvious and clear prejudice to his case. (See transcript, attached as Ex. A) As such, a dismissal of the charges was not only warranted, but entirely within the Court's discretion and authority under the law.

On a motion to reconsider, and now as part of this appeal, Appellant asserts that pre-trial negotiations between Trooper Davis and counsel for Respondent provide additional evidence that Respondent was not prejudiced by the Brady and Rule 5 disclosure violations. Notwithstanding that pre-trial negotiations are irrelevant, inadmissible, and inappropriately raised by Appellant, Trooper Davis *rejected* any and all overtures for a pre-trial resolution, knowing and understanding full well that Respondent would proceed with his motion to dismiss. Trooper Davis choose instead to proceed with the bench trial as scheduled, while failing to comply with pre-trial disclosure requirements. This conduct only serves to provide *additional* evidence of prejudice against Respondent, as he was consequently put in a position that he had no other alternative but to proceed with the bench trial, as demanded by Trooper Davis.

Appellant's knowing failure to comply with these mandates and disclosure obligations of Brady and SCRCP 5 deprived the Respondent of his rights, and placed him in the highly prejudicial position of being put to the task of moving forward with the bench trial without the possibility of

a fair trial. For Appellant to assert on appeal that reversal is warranted because Respondent was not prejudiced, or that dismissal was too severe a sanction, or that a more appropriate remedy under Rule 5 was available for the trial court,² not only contradicts the ample evidence contained in the record, but moreover falls woefully short of establishing that the trial court committed an error of law or an abuse of discretion.

CONCLUSION

Based upon the foregoing, because the trial court's decision was completely within the confines of the law and supported by ample evidence in the record, and that Appellant has failed to establish that there was an error of law or that the trial court abused its discretion, the order of the Honorable Victor G. Stephens must be affirmed.

/s/ John H. Guerry
Jerry N. Theos, Esq.; SC Bar # 5518
John Guerry, Esq. SC Bar # 101210
Theos Law Firm, LLC
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Charleston, SC 29401
john@theoslaw.com
(843) 577-7046
FAX (843)-203-4985
ATTORNEYS FOR THE DEFENDANT

July 17, 2020
Charleston, SC

² Despite counsel for Appellant's assertion that a request and/or motion for continuance was an appropriate remedy, a motion and/or request for a continuance was in fact never made by Trooper Davis. (See Transcript of Hearing, attached).

ATTACHMENT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA,	)	
	)	C/A No. 2020-CP-18-00905
Appellant,	)	
	)	Ticket Nos.: 20192401233408-10
v.	)	Charges: DUAC 1 st , Open Container,
	)	and Seatbelt Violation
LOUIE WEATHERS,	)	
	)	
Respondent.	)	

APPELLANT'S BRIEF

The State of South Carolina, by and through the undersigned counsel, hereby submits this brief in support of its appeal from an order of the Honorable Victor G. Stephens dismissing the above-captioned case. Judge Stephens issued his denial of the State's motion for reconsideration and final order of dismissal from the bench at the hearing on June 3, 2020.

BACKGROUND

On November 20, 2019, Lance Corporal K.C. Davis of the South Carolina Highway Patrol ("SCHP") arrested Louie Weathers ("Respondent") and charged him with Driving with an Unlawful Alcohol Concentration, .10 but less than .16, 1st Offense; Open Container; and a Seatbelt Violation. On December 9, 2019, counsel for Respondent mailed a discovery request to L/Cpl. Davis' Post headquarters in Walterboro, South Carolina. The case was scheduled for an initial appearance bench trial on December 18, 2019, nine days after the discovery request was mailed on behalf of Respondent. At the time of the December hearing, L/Cpl. Davis had not yet received the discovery request and the parties mutually agreed to continue the matter for the officer's next

hearing date of January 29, 2020, Counsel for Respondent emailed a copy of the discovery request to L/Cpl. Davis on December 18, 2019 after the hearing.

During the period when Respondent's hearings were scheduled, the SCHP Post which patrols Dorchester County was transitioning to a new means for providing discovery to criminal defendants in the Dorchester County Magistrate Courts. Previously, discovery packets were left at the Magistrate's Court in Dorchester for pick up by defendants because the SCHP Post that patrols the area is based in Colleton County. In an effort to alleviate the Court's involvement in the exchange of discovery, while also easing the burden on defendants of traveling out of county for discovery, the First Circuit Solicitor's Office began collecting discovery packets in SCHP magistrate-level cases and mailing the discovery packets to defendants. In December, shortly after the hearing and receipt of the Respondent's discovery request, L/Cpl. Davis forwarded a discovery packet to the First Circuit Solicitor's Office with the understanding that the Solicitor's Office would be mailing the same to Respondent, pursuant to the new discovery process.

On January 29, 2020, the parties reconvened for a bench trial. Before court began, L/Cpl. Davis learned that Respondent had not received the discovery packet from the Solicitor's Office. She immediately copied the discovery materials at the courthouse for Respondent's counsel in an attempt to remedy the oversight. Counsel for Respondent, having prepared a written motion to dismiss the charge for failure to provide discovery within thirty (30) days, attempted to negotiate the charges with L/Cpl. Davis but later decided to proceed with the motion when L/Cpl. Davis would not agree to a reduction in charges.¹ The written motion to dismiss was not presented to

¹ At the reconsideration hearing, counsel for the Respondent objected to the State referencing the attempt to negotiate the charge in response to the Respondent's claims he was prejudiced by the delay. Though it was unclear what the specific basis was for the objection, presumably the argument was that it was inadmissible under the South Carolina Rules of Evidence, Rule 408. The State's position was that this was not being presented in a trial to prove liability or guilt but rather in direct response to the Respondent's contention that he was prejudiced insofar as he could not assess the case and advise his client, and it should not be excluded under Rule 408. The Court sustained the objection and refused to consider evidence of the negotiation in reaching its decision, which the State contends was an error of law.

L/Cpl. Davis prior to the court date, and the State is not aware of any effort by Respondent to give notice of the motion, even though it had been prepared in advance. In argument on the motion to dismiss to the Court, counsel for Respondent argued that receipt of discovery that day could not cure the delay and that the law was clear: Respondent was entitled to a dismissal under the circumstances. The Court granted the motion for dismissal.

In response to the Court's dismissal, the State filed a motion for reconsideration, which was heard on June 3, 2020. At the hearing, the State argued that the delay was an unintentional oversight, due in part to the transition to a new discovery distribution process in Dorchester County aimed at alleviating concerns by the Courts and to ease the burden on defendants of having to travel out of county to collect discovery packets. Additionally, the State argued that there was no prejudice to Respondent under the circumstances and that any potential for prejudice could have been cured with less extreme sanctions. At the conclusion of the hearing, the Court denied the State's motion and maintained the case was dismissed. The State inquired as to what finding of prejudice the Court was relying on in making its decision, but received no response. Subsequently, the State has filed this timely appeal.

DISMISSAL OF THE CASE WAS AN ABUSE OF THE COURT'S DISCRETION

Discovery in criminal cases in South Carolina is based primarily on two rules: the Brady² disclosure rule and Rule 5 of the South Carolina Rules of Criminal Procedure (SCR CrimP).

The Brady disclosure rule is grounded in a defendant's fundamental right to a fair trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments and requires the prosecution to disclose evidence that is in its possession, favorable to the accused, and material to guilt or punishment. United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985);

² Brady v. Maryland, 373 U.S. 83 (1963).

United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Rule 5 of the South Carolina Rules of Criminal Procedure outlines specific requirements for disclosure in criminal cases in the South Carolina state courts. Relevant to this appeal, SCRCrimP Rule 5(a)(3) states that the prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made. Rule 5(d)(2) sets forth the consequences of a failure to comply with a discovery request:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

Despite the different underpinnings of Brady and Rule 5, each has the same goal of ensuring a defendant's right to a fair trial. See State v. Kennerly, 331 S.C. 442 (Ct.App. 1998). Neither is designed "to displace the adversary system as the primary means by which truth is uncovered, but [rather] to ensure that a miscarriage of justice does not occur." Id. quoting Bagley, 473 U.S. at 675, 105 S.Ct. 3375.

Discovery sanctions should be tailored appropriately to cure any prejudice resulting from a party's noncompliance and to ensure a fair trial. George L. Blum, J.D., *Dismissal of Case Against Defendants with Prejudice as Discovery Sanction Against State*, 10 A.L.R.7th Art. 6 (2016). Ordinarily, a court considering a discovery violation will impose the least severe sanction that is consistent with the purpose of the discovery rules. Id.

In United States v. Hastings, 126 F.3d 310 (4th Cir. 1997), the Fourth Circuit Court of Appeals determined that the trial court had abused its discretion for ordering the dismissal of a case for the government's failure to follow a court order regarding discovery. In Hastings, the

defendant faced charges of failing to file tax returns for several years. In response, the defendant argued that he was selectively prosecuted because he was a Republican. The district court ordered the government to provide discovery of specific documents regarding the selective prosecution, which the government willfully failed to do because it disagreed with the court's decision. The Fourth Circuit Court of Appeals held that, while the district court could sanction the government for its recalcitrance, dismissal of the case against the defendant was an extreme and inappropriate sanction, and reinstated the case and remanded it to the trial court. In Hastings, the Fourth Circuit Court of Appeals noted that, in determining a suitable and effective sanction for a discovery violation, a court must:

- (1) weigh the reasons for the government's delay and whether it acted intentionally or in bad faith;
- (2) the degree of prejudice, if any, suffered by the defendant; and
- (3) whether any less severe sanction will remedy the prejudice and the wrongdoing of the government.

See Id. at 317.

Likewise, South Carolina weighs similar factors in determining whether dismissal is an appropriate sanction for a violation of Rule 5. In State v. Wilkins, 310 S.C. 81 (Ct.App.1992), the South Carolina Court of Appeals found that the defendant was not entitled to a dismissal for failure by the State to provide discovery in a timely fashion under Rule 5, when the defendant could not show he was prejudiced by the delay. In Wilkins, the counsel for the defendant requested discovery on August 25, 1989. Two days later, the co-defendant fled the jurisdiction. Having received no discovery, counsel for the defendant filed a motion to compel on November 30, 1989. On February 1, 1990, the State provided the defendant with reports implicating the co-defendant in related

criminal activity. The defense argued that the failure to provide the discovery in a timely fashion hindered the defendant's ability to argue a mere-presence defense, as they would have had the opportunity to interview the co-defendant had they known of his criminal history prior to his flight. The Court rejected the defendant's argument, citing that the flight occurred before the thirty-day window for disclosure under Rule 5, and that the defendant "was in no different position on the date of disclosure than he would have been had the disclosure been timely made." Id. at 84.

In the matter before the Court, there is no reasonable basis for a dismissal under the law. The failure to provide discovery was not intentional, rather an omission due to a transition for discovery distribution in Dorchester County intended to benefit the courts and criminal defendants. Unfortunately, the timing of this particular matter coincided with that period of transition, which resulted in the delay. L/Cpl. Davis was unaware that the defendant had not received discovery prior to court on January 29, 2020. Immediately upon learning that the Respondent had not received the discovery she had submitted to the Solicitor Office's, she provided counsel for Respondent with a copy of the discovery packet.

Respondent has argued that he was prejudiced by the delay in discovery because he was intending to try the case on January 29, 2020, and the State's failure to provide discovery prior to the trial constituted prejudice that could not be cured. However, this argument fails for several reasons. If Respondent's counsel actually intended to try the case on January 29th, he would not have waited until the day of the trial to notify the State that he had still not received discovery. To the State's knowledge, counsel for Respondent did not make any effort after December 18, 2019, to contact L/Cpl. Davis about the lack of discovery or his motion to dismiss, even though his office previously corresponded with L/Cpl. Davis by email. Instead, he waited until the day of the trial, armed with a typed motion to dismiss, to raise his concern that he could not proceed in a bench.

trial. Additionally, it is the State's understanding that Respondent was out of state on the day of the bench trial, further evidencing that counsel for Respondent had no intention of proceeding with trial that day.

Counsel for Respondent could have made a request to continue the matter or compel discovery prior to the hearing, if he was genuinely concerned about his client's right to a fair trial. Clearly, the State would not have a basis to object under the circumstances and L/Cpl. Davis actually argued in favor of that remedy at the first hearing. Moreover, since the proceeding set for January 29, 2020, was a bench trial, either party could have motioned to move it to a jury trial docket, rather than proceed that day. Finally, while counsel for Respondent maintained to the Court that the delay made it impossible for him to assess the case and advise his client, he attempted to negotiate a reduced charge with L/Cpl. Davis before the hearing,³ and only presented the motion to dismiss when L/Cpl. Davis refused to reduce the charges.

CONCLUSION

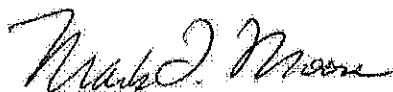
There was no prejudice to Respondent due to the delay in disclosure of discovery. No one would have expected or required Respondent to proceed with a bench trial in the absence of discovery. The delay resulted from the State's efforts to transition to a better system of discovery, and it was unknown to L/Cpl. Davis that Respondent had not received discovery until she appeared at the trial. She immediately sought to remedy it. Clearly, a continuance would have cured any potential for prejudice to Respondent, and Respondent would have been in no different position on the date of disclosure than he would have been had the disclosure been timely made. Respondent should not benefit from a contrived scenario from which to argue his client was

³ See footnote 1.

prejudiced. The point of the discovery rules is to ensure a fair trial and to protect against a miscarriage of justice. In the same vein, extreme and inappropriate sanctions which result in improper dismissals also undermine our system of justice.

Wherefore, the State respectfully requests that the decision of the Magistrate be overturned and that the case be remanded to the lower court for trial and for any such other relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,



Mark S. Moore, Lowcountry Prosecutor
South Carolina Department of Public Safety
Office of General Counsel
597 Old Mount Holly Road, Suite 304
Goose Creek, SC 29445
(843) 953-6040
markmoore@scdps.gov
Attorney for The State of South Carolina

This 16th day of July, 2020
Goose Creek, South Carolina

ATTACHMENT

F

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

MAGISTRATE'S COURT

CASE NO: 20192401233408-10
CP CASE NO: 2020CP1800905

State of South Carolina,
Plaintiff

vs.

Louie Weathers
Defendant(s)

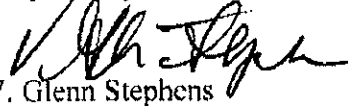
RETURN OF APPEAL

This matter is on appeal from the Magistrate's Court of Dorchester County, South Carolina, Honorable V. Glenn Stephens, Presiding Judge.

This case was heard on June 3, 2020, both parties were present and presented their argument on a Motion to Reconsider and Reopen. I denied the motion based on failure to comply with Rule 5.

Dated this 16 day of June, 2020.

Respectfully Submitted,



V. Glenn Stephens

Magistrate, Dorchester County

FILED-RECORDED

6-17-2020

Cheryl Graham
Clerk of Court
Dorchester County

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT

COUNTY OF DORCHESTER)

Ticket Nos.: 20192401233408-10

Charges: DUI, 1st, Open Container, and
Seatbelt Violation

) FILED-RECORDED

STATE OF SOUTH CAROLINA,)

6-17-2020

) Cheryl Graham
) Clerk of Court

v.)

) **MOTION TO RECONSIDER AND REOPEN**

LOUIE WEATHERS,)

6-3-2020 Mot. on

) Defendant.)

denied

TO: THE HONORABLE VICTOR G. STEPHENS

COMES NOW the State of South Carolina, by and through the undersigned attorney, who respectfully move this Court to reconsider its Order dismissing the above-referenced charges and to reopen the above-captioned matter.

On January 29, 2020, this case was scheduled for a proceeding before this Court in the St. George Magistrate's Court. During the proceeding, the defense made a motion to dismiss because it received discovery twelve (12) days after the 30-day timeframe described in Rule 5 of the South Carolina Rules of Criminal Procedure ("hereinafter Rule 5"). In response, Trooper K.C. Davis of the South Carolina Highway Patrol argued that (1) discovery was served on the defense immediately prior to the hearing; (2) delay in disclosure of evidence was unintentional; and (3) dismissal is not the proper remedy for a failure to comply with Rule 5. Following the motion, the Court granted the defense's request for dismissal.

Rule 5 outlines the requirements for disclosure of evidence in criminal proceedings. Under Rule 5(a)(3), the prosecution is required to respond to a defense request for disclosure no later than thirty (30) days after the request is made, unless the court orders otherwise. Rule 5(d)(2) outlines

the remedies a court may impose in response to a failure to comply with Rule 5. These remedies include:

1. ordering such party to permit the discovery or inspection,
2. granting a continuance,
3. prohibiting the party from introducing evidence not disclosed, or
4. entering such other order as the court deems just under the circumstances.

SCRCrimP Rule 5(d)(2). Notably, noncompliance with Rule 5 does not include dismissal of a case in its entirety as a prescribed remedy.

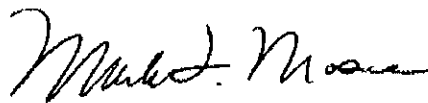
Should a court entertain the idea that dismissal is a just remedy under the circumstances, it must first make a determination that a defendant has been prejudiced by the noncompliance; or in this case, that the defendant was prejudiced by the failure to receive discovery 12 days sooner. The South Carolina Court of Appeals upheld the prejudicial showing requirement in *State v. Wilkins*. See *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (S.C. App. 1992). The *Wilkins* Court specifically established that the burden is on the defendant to establish how he has been prejudiced by the delay. *Id.* Further, the Court may weigh whether the defendant is in a "different position on the date of disclosure than he would have been had disclosure been timely made." *Id.* In the absence of a showing of actual prejudice to a defendant, a Rule 5 violation cannot be the basis for dismissal. A similar analysis has been found applicable to *Brady* material. (Failure to disclose *Brady* material is reversible error only when its omission deprives the defendant of a fair trial. *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999)).

In our case, the defense sought dismissal, the most extreme sanction, against the prosecution for a failure to provide a Rule 5 response in a timely manner. In seeking dismissal, the defense argued that dismissal was the only reasonable option to cure the prosecution's delay in

disclosure, even though Rule 5 provides for several other less punitive options. Significantly, at no point did the defense articulate how it had been prejudiced by the prosecution's delay. Nor did the defense argue that the delay would cause it to be denied a fair trial.¹ In fact, the record does not even indicate that a trial was scheduled to take place the day the motion was heard or even any time in the near future. Even if the Court finds that dismissal is the only just and proper remedy to cure the delay in this case, dismissal would not be appropriate without a finding of prejudice.

Based on the foregoing, the State moves the Court to reconsider its prior ruling, reopen the case, and reschedule the matter to be heard on its merits.

Respectfully Submitted,



Mark S. Moore, Lowcountry Prosecutor
South Carolina Department of Public Safety
Office of General Counsel
597 Old Mount Holly Road, Suite 304
Goose Creek, SC 29445
(843) 953-6040

Goose Creek, South Carolina
February 4, 2020

¹ Again, the defense was served with the prosecution's complete Rule 5 response prior to the hearing before the Court.

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**Jerry Theos
11 State Street
Charleston, SC 29401**

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

SUMMARY COURT SUMMONS

STATE VS.	Louie Clifton Weathers
CASE #(S)	20192401233408 -20192401233409-20192401233410
OFFICER	Davis, Kristen
AGENCY	S C Highway Patrol Troop 6
CHARGE	DUI Per Se / DUAC, .08 but less than .10, 1st Offense - Open Container -Seatbelt

Please be advised that the above referenced case(s) has been continued from its original trial date and is now scheduled to be heard on **January 29, 2020 at 10:00 AM.**

You are hereby summoned to appear on the above date in the

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC**

Please notify any witnesses you may have of the change in trial date.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES
MADE AND PROVIDED.**

JUDGE

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

December 19, 2019

COPY

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

**Louie Weathers
4121 Hidden Valley Rd Nw
Cleveland, TN 37312**

SUMMARY COURT SUMMONS

STATE VS.	Louie Clifton Weathers
CASE #(S)	20192401233408 -20192401233409-20192401233410
OFFICER	Davis, Kristen
AGENCY	S C Highway Patrol Troop 6
CHARGE	DUI Per Se / DUAC, .08 but less than .10, 1st Offense - Open Container -Seatbelt

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You are hereby summoned to appear on the above date in the

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC**

Please notify any witnesses you may have of the change in trial date.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES
MADE AND PROVIDED.**

JUDGE

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

December 19, 2019

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

Kristen Davis

SUMMARY COURT SUMMONS

STATE VS.	Louie Clifton Weathers
CASE #(S)	20192401233408 -20192401233409-20192401233410
OFFICER	Davis, Kristen
AGENCY	S C Highway Patrol Troop 6
CHARGE	DUI Per Se / DUAC, .08 but less than .10, 1st Offense - Open Container -Seatbelt

Please be advised that the above referenced case(s) has been continued from its original trial date and is now scheduled to be heard on **January 29, 2020 at 10:00 AM.**

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**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC**

Please notify any witnesses you may have of the change in trial date.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES
MADE AND PROVIDED.**

JUDGE

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

December 19, 2019

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE MAGISTRATE'S COURT
) FOR DORCHESTER COUNTY

The State

Vs.

Louie Weathers,

Defendant.

FILED-RECORDED)

6-17-2020)

Cheryl Graham
Clerk of Court
Dorchester County)

DEFENDANT'S RESPONSE IN
OPPOSITION TO THE STATE'S
MOTION TO RECONSIDER AND
REOPEN

TICKET No.: 2019-2401-233408

Defendant Louis Weathers, ("Defendant"), by and through his counsel, hereby submits this response in opposition to the State's Motion for Reconsideration pursuant to Rule 59(e) SCRPC filed on February 4, 2020, following this Court granting the Defendant's Motion to Dismiss on January 29, 2020.

PROCEDURAL BACKGROUND

On November 20, 2019, South Carolina Highway Patrol Officer K.C. Davis arrested and jailed the Defendant on the charges of Driving with an Unlawful Alcohol Concentration, Open Container, and a Seat Belt Violation. Defendant's initial court date was scheduled for December 18, 2019. On December 9, 2019, undersigned counsel filed a notice of appearance and served Trooper K.C. Davis with his Request and Motion for Production (pursuant to Brady v Maryland) and his General Request for Discovery and Production via U.S. Mail to Trooper Davis' headquarters, located at 100 Mable T. Willis Blvd., Walterboro, S.C. 29488 (See attached, Exhibit A). Despite being properly served with said Defendant's discovery requests, Trooper Davis appeared at the initial Court hearing on December 18, 2019, without having provided any responses to said discovery requests. In fact, Trooper Davis denied ever being served with a copy of Defendant's discovery motions. Therefore, in an effort to accommodate and permit additional

DORCHESTER COUNTY
DATE 6/12/2020

16 J. Hens

time for the State to comply and respond to Defendant's discovery requests, counsel and Trooper Davis agreed to continue the trial date to the next available term of January 29, 2020. Moreover, as an additional gesture of good faith and civility, counsel forwarded an e-mail to Trooper Davis on December 18, 2020, attaching copies of Defendant's previously served Request and Motion for Production (pursuant to Brady v Maryland) and his General Request for Discovery and Production. Trooper Davis acknowledged and confirmed receipt of Defendant's e-mail attaching the discovery motions. (See Exhibit B)

On January 29, 2020, Defendant, with counsel, appeared before this Court for the trial of this case. However, in that Trooper Davis had still not responded or complied with Defendant's discovery requests and disclosures, as required per Rule 5(a)(3) of the South Carolina Rules of Criminal Procedure (SCRCP), counsel moved to dismiss the charges.¹ Following lengthy oral arguments addressing, in detail, the actual prejudice suffered by the Defendant due to the State's noncompliance, the Court granted Defendant's Motion to Dismiss. On February 4, 2020, the State filed a Motion for Reconsideration.

DISCUSSION

The South Carolina Supreme Court discussed the function of SCRCP 59(e) in Elam v. S.C. Dep't of Transp. 602 S.E.2d 772, 780 (2004). "Our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Id.; see also Arnold v. State, 420 S.E.2d 834 (1992) ("purpose of Rule

¹ Counsel personally provided a copy of its Motion to Dismiss to Trooper Davis and the Court during the January 29, 2020 hearing, attached as Exhibit C.

59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits")

Here, the Court has not misunderstood, failed to fully consider, or failed to rule on any issue presented at Defendant's Motion to Dismiss on January 29, 2020. In their motion to reconsider, the States asserts that dismissal is an improper remedy under Rule 5 of the South Carolina Rules of Criminal Procedure. This Court is fully aware, however, that dismissal of the Defendant's charge was entirely appropriate pursuant to the plain language of Rule 5(d)(2)(4), which provides in pertinent part:

[I]f at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, *or it may enter such other order as it deems just under the circumstances.*

S.C. Crim. Rule 5(d)(2)(4) (Emphasis added).

Furthermore, although not present at the hearing, counsel for the State asserts that Defendant's counsel failed to articulate any prejudice suffered by the Defendant, or how the Defendant would be denied a fair trial due to the State's noncompliance. Contrary to the State's assertion, the record reflects that extensive oral arguments were held before this Court, wherein Defendant's counsel set forth in a plain and very detailed manner the extreme prejudice suffered by the Defendant. It was irrefutable that absolutely nothing had been turned over by the State from the Defendant's arrest on November 20, 2019 through the January 29, 2020 trial date. No Brady Materials. No incident site video. No Record of Arrests and Prosecutions (RAP Sheet). No incident reports. No booking reports. Put simply, there had been absolutely no response to the Defendant's

Discovery Motions, despite Trooper Davis acknowledging receipt of the discovery requests over 42 days prior to the agreed upon trial date. (See attached Exhibit B) The Court considered the State's noncompliance, and considered that the State had not provided any potentially exculpatory or incriminating evidence, as mandated by Rule 5 and the applicable case law. As such the Defendant was denied and deprived of his Due Process and Constitutional rights to be fully apprised of the State's allegations and evidence relied upon in the prosecution and trial of the case.

The mandates regarding discovery and disclosures by the State per Rule 5 (SCRCP) exist for a reason, to ensure that each and every Defendant is afforded his due process and procedural rights, in order to properly prepare for and engage in a trial. The State's knowing failure to comply with these mandates deprived the Defendant of his rights and consequently put him in a position that he could not fairly proceed with the trial of the case. Furthermore, our trial Courts have regularly dismissed Driving Under the Influence (DUI) cases wherein the prosecution fails to produce video recordings of the arrest incident site, and our appellate courts have routinely affirmed said dismissals. See State v. Taylor 411 S.C. 294, 301 (Ct. App. 2014)(holding dismissal of DUI charge is an appropriate remedy if the offer fails to produce video recording from incident site); see also State v. Branham, 708 S.E.2d 806 (Ct. App. 2011); City of Rock Hill v. Suchenski 646 S.E.2d 879 (2007) These dismissals are based upon the prosecution's failure to comply with S.C. Code § 56-5-2953, which is a violation of SCRCP Rule 5. This is what transpired in this case; namely, that the State failed to comply with the aforementioned discovery motions and, in doing so, failed to provide the incident site videos as well as any and all other discovery materials.

Further, as stated in Defendant's Motion to Dismiss, under both the United States and South Carolina Constitutions, the Defendant must be granted certain discovery. The United States Constitution requires "evidence favorable... material either to guilt or to punishment" to be turned

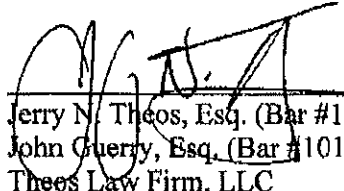
over. The South Carolina Constitutional requirement of Due Process is expressed in SCRCP Rule 5, which requires that items in four categories (Statement of Defendant, Defendant's Prior Record, Documents and Tangible Objects, Reports of Examinations and Tests) must be turned over to the Defendant. The South Carolina Legislature has made even more strict requirements on not only what must be turned over, but the evidence that must be collected in a Driving Under the Influence Case. And SCRCP requires that it all be turned over within 30 days.

In this case, nothing had been turned over by the State from the Defendant's arrest on November 20, 2019 through the January 29, 2020 trial date. No Brady Materials. No incident site video. No Record of Arrests and Prosecutions (RAP Sheet). No incident report. No booking report. There has been no response to the Rule 5 / Brady / Edwards Request and Notice. Additionally, there has not even been a response to the Notice of Appearance. In short, the Defendant is left without the evidence that favors him and without even knowing the scope of the evidence against him. Which leaves the Defendant in limbo without any hope of resolution. Not only is the Defendant left unable to prepare his defense, but the Defendant is also unable to gauge the likelihood of success of his Defense or the wisdom of continuing to defend the matter.

CONCLUSION

Based upon the foregoing, the trial Judge's dismissal of the charges was both justified and appropriate and the State has presented no meritorious basis for the Court to reconsider its prior ruling and dismissal of the case. For the reasons set forth above, the State's Motion for Reconsideration should and must be denied.

[Signature on page to follow]



Jerry N. Theos, Esq. (Bar #12155)
John Guerri, Esq. (Bar #101219)
Theos Law Firm, LLC
11 State Street
Charleston, South Carolina 29401
P: (843) 577-7046
F: (843) 203-4985
Bar Number: 5518
Jerry@theoslaw.com
ATTORNEY FOR DEFENDANT
LOUIS WEATHERS

Charleston, South Carolina

June 2nd 2020

THEOS LAW FIRM, LLC
Attorneys At Law
11 State Street
Charleston, South Carolina 29401



Jerry N. Theos, Esquire
jerry@theoslaw.com
Margaret Theos Guerry, Esquire
maggie@theoslaw.com
John H. Guerry, Esquire
john@theoslaw.com

Phone: (843) 577-7046
Fax: (843) 203-4985

December 9, 2019

VIA U.S. MAIL AND FAX: (843) 563-0123

Attention: Sherri Hoff, Clerk of Court
Tera S. Richardson, Chief Magistrate Judge
5200 E. Jim Bilton Boulevard
St. George, South Carolina 29477

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

RE: State of South Carolina v. Louie Clifton Weathers
Ticket Numbers: 20192401233408- DUAC, 20192401233408- Open Container and
20192401233410- Seatbelt Violation

Dear Ms. Hoff:

Enclosed please find the Defendant's General Brady and Discovery Motions for filing in the above-referenced matter. Please return three filed copies in the self-addressed stamped envelope provided.

By copy of this letter, I am furnishing copies of these motions to Trooper Kristin Davis via email communication and U.S. Mail.

Sincerely,

A handwritten signature in dark ink, appearing to be "Jerry N. Theos".

Jerry N. Theos

JNT/jss
Enclosures

cc: Trooper Kristin Davis (w/enclosures- via U.S. Mail and email communication)
Louie Weathers (w/enclosures - via email communication only)

DORCHESTER COUNTY
DATE 6/16/2020
V.G. Sykes

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE MAGISTRATE COURT
FIRST JUDICIAL CIRCUIT
TICKET NUMBERS: 20192401233408- DUAC,
20192401233409- Open Container and
20192401233408- Seatbelt Violation

STATE OF SOUTH CAROLINA,

versus

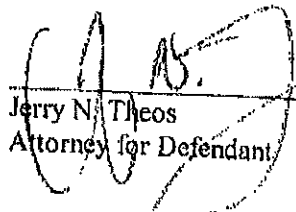
LOUIE CLIFFTON WEATHERS,
Defendant.

REQUEST AND MOTION
FOR PRODUCTION

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

TO: Judge Tera S. Richardson, Chief Magistrate Judge:

YOU WILL PLEASE TAKE NOTICE that the Defendant above named, by and through the undersigned attorney, hereby requests and moves that the Solicitor of the First Judicial Circuit produce and make available to the Defendant or his counsel any and all documents, evidence and other information which is subject to disclosure, pursuant to Rule 5 of the Rules of Practice of the Circuit Courts of South Carolina. This Defendant further requests that the Solicitor make available any and all evidence favorable to him which is subject to disclosure, pursuant to Brady vs. Maryland, 373 US 83 (1963), and subsequent cases, to include any and all information and evidence which is discoverable pursuant to Rule 5 or Brady, supra, and which is in the hands of agents for the prosecution, including police agencies.


Jerry N. Theos
Attorney for Defendant

Charleston, South Carolina.
December 10th, 2019

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE COURT
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) TICKET NUMBERS: 20192401233408- DUAC,
20192401233409- Open Container and
20192401233408- Seatbelt Violation

STATE OF SOUTH CAROLINA,)
)
versus)
)
LOUIE CLIFFTON WEATHERS,)
)
Defendant.)
)

GENERAL REQUEST FOR DISCOVERY
AND PRODUCTION

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

TO: Tera S. Richardson, Chief Magistrate Court:

YOU WILL PLEASE TAKE NOTICE that the Defendant above named, by and through the undersigned attorney, does hereby request pursuant to Circuit Court Rule 5, that the State make the following immediately available to the Defendant and his attorney for inspection and copying:

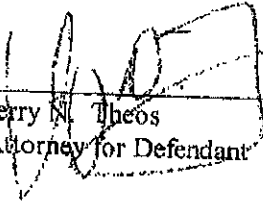
1. Any written or recorded statements made by Defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the State;
2. The substance of any oral statements which the State intends to offer in evidence at the trial made by the Defendant;
3. The prior criminal record of the Defendant, if any;
4. All books, papers, documents, photographs or tangible objects which are in the possession, custody or control of the State and are material and relevant to this case, including any handwritten notes taken by an investigating agents;
5. The results or reports of physical or mental examination or scientific tests or experiments, or copies thereof, which are in the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence, may become known to the State;
6. All evidence favorable to the Defendant or which would be helpful in the preparation of a defense or in mitigation of punishment, which includes, but is not limited to, the following:

- a. All information concerning the conduct, character and reputation of any such witness or witnesses which is relevant to his or her truthfulness or untruthfulness;
 - b. Any information relevant to the credibility of any State witness;
 - c. The criminal records of such witnesses, including specifically, any prior convictions of crimes punishable by death or imprisonment in excess of one (1) year, or which involves dishonesty or false statements;
 - d. The substance of any agreements or proposed agreements, oral or written, made in the name of the State to any State witnesses, the subject of which deals directly or indirectly with promise of favored treatment or leniency in return for either pleas of guilty, nolo contendere, or any other criminal or civil litigation or sentencing procedure;
 - e. All evidence tending to show that any alleged acts or conduct by this Defendant were done without criminal intent;
 - f. This request specifically includes any information which could show that, at the time of any alleged act, the Defendant was neither present, mentioned nor involved, directly or indirectly;
 - g. All names and present addresses of persons who have any knowledge of the existence of any evidence which might be relevant to acts charged as a crime in the charge against this Defendant, including all persons who (a) will be witnesses for the State upon the trial of this case, or (b) will be called as witnesses by the State.
7. By way of illustration of matters sought, and not by way of limitation, the

Defendant asks for the following:

- a. All dispatch tapes, logs, reports, notations or indications of any kind indicating the time of the initial report of the charges, by whom reported, the nature of the original report, and any description of a suspect or suspects;
- b. The nature of any written or oral statements or admissions by any co-Defendant;
- c. The full name, address and telephone number of the arresting officer and any handwritten notes of the investigation of the arresting officer;

- d. Any criminal record of any alleged co-Defendant or co-actor;
- e. All physical or tangible evidence collected or received by the State in this case which has not been destroyed in the course of scientific evidence;
- f. All tape recordings, memoranda and typed or handwritten notes pertaining to statements of the Defendant, which are known to or discoverable by the State;
- g. All tape recordings, memoranda and typed or handwritten notes known to or discoverable by the State pertaining to the prior statements of any witnesses to be called by the State; and
- h. All notes, memoranda or recordings pertaining to the preparation, execution and outcome of any scientific experiments conducted on behalf of the State.


Jerry N. Theos
Attorney for Defendant

Charleston, South Carolina.
December 10th, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE MAGISTRATE COURT
FIRST JUDICIAL CIRCUIT
TICKET NUMBERS: 20192401233408- DUAC,
20192401233409- Open Container and
20192401233408- Seatbelt Violation

STATE OF SOUTH CAROLINA,)

versus)

LOUIE CLIFFTON WEATHERS,)

Defendant.)

CERTIFICATE OF SERVICE

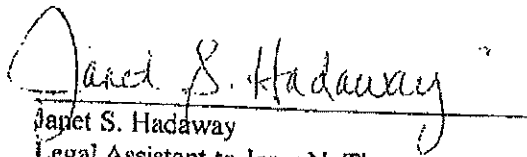
I HEREBY CERTIFY that a true copy of the foregoing Request and Motion for
Production and General Request for Discovery and Production has been served upon Trooper
Kristin Davis, of the First Judicial Circuit, by mailing U.S. Postage Pre-Paid a copy to her this
9th day of December, 2019 to the following:

Trooper Kristin C. Davis

100 Mable T. Willis Boulevard

Walterboro, South Carolina 29488

Kristindavis@scdps.gov


Janet S. Hadaway
Legal Assistant to Jerry N. Theos
Attorney for Defendant

Charleston, South Carolina.

EXHIBIT

B

John Guerry

From: Janet
Sent: Wednesday, December 18, 2019 11:24 AM
To: Davis, Kristen C.
Cc: John Guerry
Subject: RE: [External] FW: State v. Louie Weathers

Thank you!

Janet S. Hadaway
Legal Assistant to Jerry N. Theos
and Margaret Theos Guerry
janet@theoslaw.com

Theos Law Firm, LLC
11 State Street
Charleston, SC 29401
Phone: (843) 577-7046
Fax: (843) 203-4985

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

PLEASE NOTE MY NEW CONTACT INFORMATION

****CONFIDENTIAL COMMUNICATION**** The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

*****IRS CIRCULAR 230 NOTICE***** Any federal tax advice contained in this communication (or in any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending any transaction or matter addressed in this communication.

From: Davis, Kristen C. <KristenDavis@SCDPS.GOV>
Sent: Wednesday, December 18, 2019 11:18 AM
To: Janet <Janet@Theoslaw.com>
Subject: RE: [External] FW: State v. Louie Weathers

Got it!

Lance Corporal K.C. Davis

SCDPS / SCHP / Troop 6 Post B
100 Mable T. Willis Blvd.
Walterboro, S.C. 29488
843-953-6010 office
843-538-7608 fax

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Mark S Moore
597 Old Mount Holly Road, Suite 304
Office Of General Counsel
Goose Creek, SC 29445

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

SUMMARY COURT SUMMONS

STATE VS.	Louie Clifton Weathers
CASE #(S)	20192401233408-20192401233409-20192401233410
OFFICER	Davis, Kristen
AGENCY	S C Highway Patrol Troop 6
CHARGE	DUI Per Se / DUAC, .08 but less than .10, 1st Offense- Open Container, Seatbelt

Please be advised that a **Motion to Reconsider and Reopen** has been filed on the above referenced case and that Motion Hearing is now scheduled to be heard on **June 3, 2020 at 10:00 AM.**

On the date mentioned above, you are hereby summoned to be and appear in the

Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASES MADE AND PROVIDED.**

JUDGE

Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123

February 5, 2020

COPY

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Jerry Nicholas Theos
11 State Street
Charleston, SC 29401

FILED-RECORDED
12-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

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St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

February 5, 2020

COPY

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Louie Clifton Weathers
4121 Hidden Valley Rd Nw
Cleveland, TN 37312

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

SUMMARY COURT SUMMONS

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St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

February 5, 2020

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**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Kristen C Davis

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

SUMMARY COURT SUMMONS

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JUDGE

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

February 5, 2020

COPY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Mark S Moore
597 Old Mount Holly Road, Suite 304
Office Of General Counsel
Goose Creek, SC 29445

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Cheryl Graham
Clerk of Court
Dorchester County

SUMMARY COURT SUMMONS

STATE VS.	Louie Clifton Weathers
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OFFICER	Davis, Kristen
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CHARGE	DUI Per Se / DUAC, .08 but less than .10, 1st Offense- Open Container, Seatbelt

Please be advised that a **Motion to Reconsider and Reopen** has been filed on the above referenced case and that Motion Hearing is now scheduled to be heard on **April 22, 2020** at **2:00 PM**.

On the date mentioned above, you are hereby summoned to be and appear in the

Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASES MADE AND PROVIDED.**

JUDGE

Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123

February 5, 2020

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Jerry Nicholas Theos
11 State Street
Charleston, SC 29401

SUMMARY COURT SUMMONS

STATE VS.	Louie Clifton Weathers
CASE #(S)	20192401233408-20192401233409-20192401233410
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Dorchester County

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**Saint George Magistrate
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St. George, SC**

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JUDGE

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

February 5, 2020

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Louie Clifton Weathers
4121 Hidden Valley Rd Nw
Cleveland, TN 37312

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

SUMMARY COURT SUMMONS

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JUDGE

Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
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February 5, 2020

COPY

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Kristen C Davis

SUMMARY COURT SUMMONS

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

STATE VS.	Louie Clifton Weathers
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JUDGE

**Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123**

February 5, 2020

COPY

FILED-RECORDED
6-17-2020
Graham
Court
County

VOID ☐

NOTES CK PT @ WIRE-IMP TURN, NO SIG, RAN OVER CURB

Form 5-438 Rev. 08/2017		UNIFORM TRAFFIC TICKET STATE OF SOUTH CAROLINA											
VERSUS													
FIRST NAME LOUIE				MIDDLE NAME CLIFFTON				LAST NAME WEATHERS					
STREET 4121 HIDDEN VALLEY RD NW													
CITY CLEVELAND				STATE TN				ZIP CODE 37312					
DL STATE TN		DRIVER'S LICENSE NO. 102084373				NONE ☐ CLASS D		CDL ☐ YES ☒ NO					
RACE W		SEX M		BIRTH DATE 01/22/1976		HGT. 73		WGT. 200		HAIR BRO		EYES BRO	
VEH LIC NO 3R38E6		NONE ☐ STATE TN		MAKE OF VEH NISS		YEAR 17		18 PSGR VEH H2Z, A2Z		AUTO LICENED		BICYCLE M/TRECYCL	
VEHICLE OWNER FIRST NAME LOUIE				MIDDLE NAME CLIFFTON				LAST NAME WEATHERS					
OWNER STREET 4121 HIDDEN VALLEY RD CLEVELAND				CITY TN				STATE 37312		ZIP CODE			
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT													
NAME OF TRIAL COURT SAINT GEORGE MAGISTRATE				18101 STREET 5200 E. Jim Bilton Blvd.									
DATE OF TRIAL 12/18/2019		TIME OF TRIAL 1000		CITY St. George		STATE SC		ZIP CODE 29477					
VIOLATION SECTION NO. 56-05-2933(A)				VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO				DUAC: .10 BUT LESS THAN .16; 1ST OFFENSE					
DATE OF VIOLATION 11/20/2019				TIME OF VIOL. 2300				SC POINTS		B.A. LEVEL REF 0.150			
VIOLATION LOCATION US 15 HIGHWAY 15 S				COUNTY 18				CITY SAINT GEORGE					
LAT 33.10219				LONG -80.5957									
NAME AND RANK OF ARRESTING OFFICER DAVIS K.C.				L/CPL				SCJCA OFFICER NUMBER 7363-4601					
BAIL DEPOSITED JAIL				DATE OF ARREST 11/20/2019				BOND AMOUNT REQUESTED 1224.50					
DATE BAIL REC'D.				BY									
CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐													
NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:													
TRIAL BY: TRIAL JUDGE ☐ JURY ☐				DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐									
DISPOSITION DATE				DISPOSITION: NOLLE PROSSED ☐ GUILTY ☐ PLED: NOLO CONTENDERE ☐ FORFEITED BOND ☐ NOT GUILTY ☐ DETERMINED BAC: ☐									
CHARGE CONVICTED OF				SAME AS ORIGINAL ☐				SC POINTS					
JAIL		SUSPEND		FINE		AMT. COLLECTED		AMT. SUSPENDED		COMMITTED TO		Vehicle Searched YES	
CERTIFIED CORRECT				DATE				Arrest as Result of Collision NO					
Electronic Copy - Trial Officer / Driver's Record													
TICKET # 20192401233408													

CITY: CLEVELAND, OHIO

INCIDENT NO.:

ASGND/TROOP:

SC HIGHWAY PATROL TROOP 8

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

VOID ☐

NOTES CK PT @ WIRE-IMP TURN, NO SIG, RAN OVER CURB

Form 5-438 Rev. 08/2017											
UNIFORM TRAFFIC TICKET											
STATE OF SOUTH CAROLINA											
VERSUS											
FIRST NAME			MIDDLE NAME			LAST NAME			WEATHERS		
LOUIE			CLIFFTON								
STREET											
4121 HIDDEN VALLEY RD NW											
CITY			STATE			ZIP CODE					
CLEVELAND			TN			37312					
DL STATE	DRIVER'S LICENSE NO.				NONE ☐	CLASS	CDL				
TN	102084373					D		☐ YES ☒ NO			
RACE	SEX	BIRTH DATE		HGT.	WGT.	HAIR	EYES				
W	M	01/22/1976		73	200	BRO	BRO				
VEH IC NO	NONE ☐	STATE	MAKE OF VEH	YEAR	IF PSYCH VEH	AUTO	BICYCLE	COMB	COMM VEH		
3R38E6		TN	NISS	17							
VEHICLE OWNER FIRST NAME			MIDDLE NAME			LAST NAME			WEATHERS		
LOUIE			CLIFFTON								
OWNER STREET			CITY			STATE			ZIP CODE		
4121 HIDDEN VALLEY RD CLEVELAND			TN			37312					
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT											
NAME OF TRIAL COURT			STREET								
SAINT GEORGE MAGISTRATE			5200 E. Jim Bilton Blvd.								
DATE OF TRIAL		TIME OF TRIAL		CITY		STATE		ZIP CODE			
12/18/2019		1000		St. George		SC		29477			
VIOLATION SECTION NO.			VIOLATION - COURT APPEARANCE REQUIRED			YES ☒ NO ☐					
61-04-0110			OPEN CONTAINER OF BEER OR WINE IN MOTOR VEHICLE								
DATE OF VIOLATION			TIME OF VIOL.			SC POINTS			B.A. LEVEL REF		
11/20/2019			2300								
VIOLATION LOCATION			COUNTY								
US 15 HIGHWAY 15 S			18								
LAT			LONG			CITY					
33.10219			-80.5957			SAINT GEORGE					
NAME AND RANK OF ARRESTING OFFICER						SCCJA OFFICER NUMBER					
DAVIS K.C. L/CPL						7363-4601					
BAIL DEPOSITED			DATE OF ARREST			BOND AMOUNT REQUESTED					
JAIL			11/20/2019			257.50					
DATE BAIL REC'D.			BY								
CASE BEFORE: MAGISTRATE ☒ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐											
NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:											
TRIAL BY: TRIAL JUDGE ☐			JURY ☐			DEFENDANT: DID NOT APPEAR ☐			APPEARED ☐		
DISPOSITION DATE			DISPOSITION:			PLED: NOLO CONTENDERE ☐					
			ROULE PROSSED ☐ GUILTY ☐								
			FORFEITED BOND ☐ NOT GUILTY ☐			DETERMINED BAC: ☐					
CHARGE CONVICTED OF			SAME AS ORIGINAL ☐			SC POINTS					
JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED	COMMITTED TO	Vehicle Searched			YES		
CERTIFIED CORRECT					DATE		Arrest by Result of Collision				
							NO				
Electronic Copy - Trial Officer / Driver's Record						TICKET # 20192401233409					
											

CITY/COUNTY: DORCHESTER

INCIDENT NO.:

AGENCY/TROOP:

SC HIGHWAY PATROL TROOP 6

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

VOID ☐
NOTES CK PT @ WIRE-IMP TURN, NO SIG, RAN OVER CURB

Form 1-418 Rev. 09/2017		UNIFORM TRAFFIC TICKET	
STATE OF SOUTH CAROLINA			
VERSUS			
FIRST NAME	MIDDLE NAME	LAST NAME	
LOUIE	CLIFFTON	WEATHERS	
STREET			
4121 HIDDEN VALLEY RD NW			
CITY	STATE	ZIP CODE	
CLEVELAND	TN	37312	
DL STATE	DRIVER'S LICENSE NO.	NONE ☐	CLASS
TN	102084373	D	CDL ☐ YES ☒ NO
RACE	SEX	BIRTH DATE	HGT.
W	M	01/22/1976	73
WGT.	HAIR	EYES	
200	BRO	BRO	
VEH LIC NO	NONE ☐	STATE	MAKE OF VEH
3R38E6	TN	NISS	17
VEHICLE OWNER FIRST NAME	MIDDLE NAME	LAST NAME	
LOUIE	CLIFFTON	WEATHERS	
OWNER STREET	CITY	STATE	ZIP CODE
4121 HIDDEN VALLEY RD CLEVELAND	TN	37312	
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT	18101 STREET		
SAINT GEORGE MAGISTRATE	5200 E. Jim Bilton Blvd.		
DATE OF TRIAL	TIME OF TRIAL	CITY	STATE
12/18/2019	1000	St. George	SC
VIOLATION SECTION NO.	VIOLATION - COURT APPEARANCE REQUIRED	YES ☒ NO ☐	
66-05-6520	SEATBELT VIOLATION - NON-CRIMINAL		
DATE OF VIOLATION	TIME OF VIOL.	SC POINTS	B.A. LEVEL REF
11/20/2019	2300		
VIOLATION LOCATION	COUNTY		
US 15 HIGHWAY 15 S	18		
LAT	LONG	CITY	
33.10219	-80.5957	SAINT GEORGE	
NAME AND RANK OF ARRESTING OFFICER	SECTION OFFICER NUMBER		
DAVIS K.C. L/CPL	7363-4601		
BAIL DEPOSITED	DATE OF ARREST	BOND AMOUNT REQUESTED	
NONE	11/20/2019	25.00	
DATE BAIL REC'D.	BY		
CASE BEFORE:	MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐		
NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:			
TRIAL BY:	TRIAL JUDGE ☐ JURY ☐	DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐	
DISPOSITION DATE	DISPOSITION:	PLED: NOLO CONTENDERE ☐	
6/4/2020	NOLLE PROSSO ☐ FORFEITED BOND ☐	GUilty ☐ NOT GUILTY ☐ DETERMINED BAC: ☐	
CHARGE CONVICTED OF	SAME AS ORIGINAL ☐	SC POINTS	
JAIL	SUSPENDED	FINED	AMT. COLLECTED
CERTIFIED CORRECT	DATE	Vehicle Searched	
		YES	
Electronic Copy - Trial Officer / Driver's Record	TICKET # 20192401233410	Arrest as Result of Collision	
		NO	

CITY/CLERK: DORCHESTER

INCIDENT NO.:

AGENCY/ROOF:

SC HIGHWAY PATROL TROOP 6

THEOS LAW FIRM, LLC

Attorneys At Law
11 State Street
Charleston, South Carolina 29401

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Margaret Theos Guerry, Esquire
maggie@theoslaw.com

John H. Guerry, Esquire
john@theoslaw.com

Phone: (843) 577-7046

Fax: (843) 203-4985

December 10, 2019

VIA U.S. MAIL AND FAX: (843) 563-0123

Attention: Sherri Hoff, Clerk of Court
Tera S. Richardson, Chief Magistrate Judge
5200 F. Jim Bilton Boulevard
St. George, South Carolina 29477

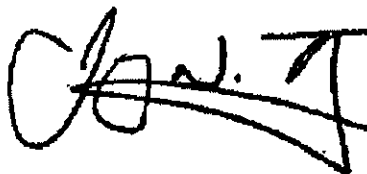
FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

RE: Louie Clifton Weathers
Ticket Numbers: 20192401233408- DUAC
20192401233409- Open Container
2019401233410- Seatbelt Violation
Officer: K. C. Davis

Dear Judge Richardson and Trooper Davis:

Please be advised that my law firm represents Louie Clifton Weathers related to the above referenced charges.

Sincerely,



Jerry N. Theos

JNT/jsh

cc: Trooper Kristin Davis (via email communication)
Louie Weathers (via email communication)

STATE OF SOUTH CAROLINA

County of Dorchester

State of South Carolina

IN THE SUMMARY COURT

DISCHARGE

vs.

Louie Clifton Weathers

DEFENDANT(S)

DISCHARGE

By Ryan Douglas Templeton, Judge in and for the County and state aforesaid,

To the Sheriff and Keeper of the Common Jail in the said County:

The Defendant, Louie Clifton Weathers, having been committed to your custody for the charge of:

Case number	Charge	Trial Court	Bond Type	Amount
20192401233408	DUI Per Se / DUAC, .10 but less than .16, 1st offense	Saint George Magistrate	Percent Bond	\$123.10
			Surety Bond	\$1,224.50
20192401233409	Alcohol / Open container of beer or wine in motor vehicle	Saint George Magistrate	Percent Bond	\$25.10
			Surety Bond	\$257.50

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

has posted bond of type

Percent Bond in the amount of **\$148.20**

and having given bond as required by the Court, you are hereby authorized and required to discharge the said Defendant from your custody. Provided that said Defendant is not held by you upon commitment for some other offense.

GIVEN UNDER MY HAND AND SEAL THIS DAY November 21, 2019

(Judge)

(Seal)

Dorchester County, SC

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

4121 Hidden Valley Rd Nw

ADDRESS

Cleveland, TN 37312

CITY/STATE/ZIP

(423) 650-2276

TELEPHONE

252-59-3952

SOCIAL SECURITY NUMBER

102084373 TN

DRIVER'S LICENSE OR ID
NUMBER

SIGNATURE OF DEFENDANT: Louie Clifton Weathers

November 21, 2019

DATE

None of Record

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:

NAME OF PERSON OR ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from

TIME

o'clock,

to

o'clock,

on DATE(S) on condition that he return to the custody of

at

LOCATION

NAME OF PERSON OR ORGANIZATION

as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release: MUST APPEAR FOR COURT

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of _____, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY BONDSMAN
COMPANY

TELEPHONE

SIGNATURE OF SURETY BONDSMAN

ADDRESS OF SURETY BONDSMAN

CITY/STATE/ZIP

SIGNATURE OF JUDGE

DATE

NAME OF INSURANCE COMPANY

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

NOTES ON PT & WIRE-IMP TURN, NO REG, RAN OVER CURB											
UNIFORM TRAFFIC TICKET STATE OF SOUTH CAROLINA											
VERSUS											
FIRST NAME DUJAY				MIDDLE NAME CLEFFTON				LAST NAME WEATHERS			
STREET 4121 HIDDEN VALLEY RD NW											
CITY CLEVELAND						STATE TN		ZIP CODE 37312			
DR STATION		OWNER'S LICENSE NO. 102084373				HOME		CLASS D		CDL ☐ YES ☒ NO	
AGE W		SEX M		BIRTHDATE 01/22/1976		SIZE 75"		WEIGHT 200		HAIR BRN	
EYES BLU		SCARS SR3EE6		HOME		STATUS NAME OF VEH TN MISS		YEAR 17		INSURANCE FACR	
VEHICLE OWNER FIRST NAME LUTIE				VEHICLE MAKE (1) CLEFFTON				LAST NAME WEATHERS			
OWNER STREET 4121 HIDDEN VALLEY R CLEVELAND						CITY TN		STATE 37312		ZIP CODE	
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT											
NAME OF TRIAL COURT 18101 STREET				COUNTY 5200 E. JIM BILTON BLVD.							
SAINT GEORGE MAGISTRATE				CITY ST. GEORGE				STATE SC		ZIP CODE 29477	
DATE OF TRIAL 12/18/2019				TIME OF TRIAL 1000				VIOLATION COUNT APPEARANCE REQUIRED NO			
VIOLATIONS SECTION NO. 16-05 2937(A)				VIOLATION COUNT APPEARANCE REQUIRED SUBJ: 16 BUT LESS THAN - 18; 1ST OFFENSE				NO			
DATE OF VIOLATION 05/15/2019				TIME OF VIOLATION 2300				POINTS 3		D.R. LINES 0.150	
VIOLATION LOCATION US 15				HIGHWAY 15 S				COUNTY 18			
LAT 33.10219				LONG -80.5957				CITY SAINT GEORGE			
NAME AND BANK OF REMITTING OFFICER DAVIS K.C.				LIC/CPL 7363-4601				SOCIAL SECURITY NUMBER XXXX-XX-XXXX			
BANK ACCOUNT NO. 1A1L				DATE OF ARREST 11/20/2019				BOND AMOUNT REQUESTED 1224.50			
BAIT DAY: NED.				BY							
☐ ALJ MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐ ANY OF THE TRIAL COURT IS TRANSFER FROM OTHER											
☐ PRESENT BY TRIAL JUDGE ☐ JURY ☐ DISPOSITION - DO NOT APPEAR ☐ APPEARED ☐ ☐ DISPOSITION WHILE PROSEC ☐ MUNITY ☐ REC'D HOLD CONTENDING ☐ ☐ FORWARDED BOND ☐ MOT CLERK ☐ DETAINMENT PAGE ☐											
CHARGE COMPLETED OF				SANK AS ORIGINAL				POINTS			
TAXI (SUPPLY)				TAXI COLLECTOR TAXI SERVICES				CONTINUED TO			
CERTIFIED CORRECT				DATE				SIGNATURE OF CLERK			
Trial Officer's Copy											

FILED-RECORDED

DORCHESTER COUNTY <i>Summary Court</i> SURETY, CASH, PERCENTAGE BOND (Bond Form II)			
COUNTY/MUNICIPALITY: COUNTY TRIAL COURT: MAGISTRATE COURT OF COURT: ST. GEORGE			TODAY'S DATE November 21, 2019
DEFENDANT'S NAME AND ADDRESS Name: Louie Clifton Weathers Address: 4121 Hidden Valley Rd Nw City, State Zip: Cleveland, TN 37312		SSN: 252-59-3952 DATE OF BIRTH: 1/22/1976 DRIVER'S LICENSE NO: 102084373 TN TELEPHONE: (423) 650-2276	
DEFENDANT ATTY: None of Record		JUDGE: Ryan D. Templeton	
FIRST APPEARANCE DATE: Wednesday, December 18, 2019	FIRST APPEARANCE TIME: 10:00 AM	FIRST APPEARANCE PLACE: 5200 East Jim Bilton Blvd., St. George SC	BOND AMOUNT \$1,492.00
CRIMINAL CHARGING DOCUMENT NUMBER(S): 20192401233408 20192401233409 	CHARGE(S): DUAC 1 ST OFFENSE \$1,224.50 OPEN CONTAINER \$257.50 		
 	FINDINGS OF FACT; NATURE OF CHARGE 		
 	RESTRICTIONS ON TRAVEL, ASSOCIATION OR RESIDENCE: 		
 	OTHER CONDITIONS: MUST APPEAR FOR COURT 		

FILED-RECORDED
6-17-2020
 Cheryl Graham
 Clerk of Court
 Dorchester County

CONSENT TO VIDEOCONFERENCING

Louie Clifton Weathers
Name of Defendant

20192401233408

20192401233409

Criminal Charging Document No.

Type of Proceeding:

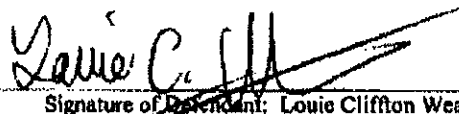
COUNTY OF DORCHESTER

- ☐ Initial Appearance
☒ Bond Hearing
☐ Preliminary Hearing
☐ Contested Motion
☐ Guilty Plea and Sentencing
(Magistrate's / Municipal Court Offense)
☐ Bench Warrant Hearing
☐ Fugitive Warrant Hearing

Trial Court: MAGISTRATE COURT OF ST. GEORGE

By my signature below, I, the defendant, consent to the use of videoconference equipment in this criminal proceeding. The court will maintain the audiotape of this proceeding for a period of sixty (60) days from today's date in all proceedings, except preliminary hearings, which must be maintained for three (3) years, after which the audiotape may be destroyed. I have been fully informed of my right to be personally present before the court for this criminal proceeding and, with that knowledge, I voluntarily waive that right.

None of Record
Attorney for Defendant


Signature of Defendant: Louie Clifton Weathers

November 21, 2019
Date

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.



Signature of Defendant: Louie Clifton Weathers

November 21, 2019

DATE

☐ Defendant refused to sign.

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

Louie Clifton Weathers
Name of Defendant

20192401233408 20192401233409
Warrant/Ticket No.

County of

Charges: DUAC 1ST OFFENSE \$1,224.50
OPEN CONTAINER \$257.50

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections.

Defendant must initial where indicated, sign, and be provided a completed copy of this form.

☒ BAIL PROCEEDING/☐ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE
(OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding
☐ None (Non-Bailable Offense) because
☐ Bond Form I (personal recognizance)
☒ Bond Form II (surety, cash, percentage)
☐ charge carries penalty of life or death; or
☐ defendant charged with violent offense while bonded out on violent offense
2. YCW (Def. Initials) For cases in which bond was set, defendant was informed:
☒ a. Warrant for arrest may be issued for violation of any condition of bail bond order.
☒ b. His right and obligation to be present at trial and that trial may proceed in his absence if he fails to attend.
☒ c. Failure to appear in court as required may result in institution of additional criminal charges. S.C. Code Ann. § 17-15-90 (2014). Failure to appear in connection with a felony, or while awaiting sentence after conviction, carries an additional penalty of not more than \$5,000 or imprisonment for not more than 3 years, or both. Failure to appear in connection with a charge for a misdemeanor which the maximum possible sentence is at least one year, carries an additional penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above may result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. YCW (Def. Initials) For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
☒ 4. YCW (Def. Initials) ☒ Orally ☒ In writing (NOTE: Defendant must be informed of right both orally and in writing.)
Defendant was informed of the right to trial by jury.
5. YCW (Def. Initials) In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which the defendant is subject to a prison sentence, defendant was informed of the following:
☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court-appointed counsel if indigent (must meet guidelines set forth in Rule 602(b), SCACR) and instructions on how to obtain court-appointed counsel. In order to apply for court-appointed counsel, defendant is required to appear before Office of the Public Defender located at 107 West 6th North Street, Summerville, SC on M - F between 10 am and 4 pm, phone 843-521-9900 for indigency screening. Defendant is responsible for a statutory fee of \$40 for indigency screening unless that fee is waived or reduced pursuant to § 17-3-30(B).
6. YCW (Def. Initials) In all domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon additional felony charge.
7. ☒ If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.
8. ☒ Defendant is required to keep court notified of any change of address until final disposition of charge(s).

Appearance or Hearing Date: Wednesday, December 18, 2019

Louie C. Weathers
SIGNATURE OF DEFENDANT: Louie Clifton Weathers

Ryan D. Templeton
Signature of Judge: Ryan D. Templeton

☐ Defendant refused to sign.

SCCA/507A (Rev. 11/2017)

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

MAGISTRATE COURT OF ST. GEORGE

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

v.
Louie Clifton Weathers
NAME OF DEFENDANT

Offense Charged: DUAC 1ST OFFENSE \$1,224.50

OPEN CONTAINER \$257.50

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one):

☒ The release of the defendant on recognizance will not reasonably assure his appearance as required by the court.

☒ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: NATURE OF CHARGE

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☒ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \$1,482.00, his release to be obtained by payment to the court of 10% (not to exceed 10%) of the full amount of the bond, deposits \$148.20 to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☐ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$1,482.00

3. That the defendant shall appear at (check one):

- ☐ the term of _____ COURT OF GENERAL SESSIONS beginning on _____ at _____ o'clock, _____, at _____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☒ the session of _____ MAGISTRATE COURT OF ST. GEORGE beginning on _____ Wednesday, December 18, 2019 at _____ 10:00 o'clock, AM, at _____ 5200 East Jim Bilton Blvd., St. George SC. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT LCW

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE: Ryan D. Templeton

November 21, 2019

DATE

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
SCCA/511A (Revised 3/2012)

Original Copy For The Trial Court - Copy For The Defendant

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

State of South Carolina

vs

Louie Clifton Weathers

Defendant

IN THE SUMMARY COURT

ORDER OF CUSTODY

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

By Dorchester County Judge Ryan D. Templeton in and for the County and State aforesaid,
These are to command you forthwith to convey and deliver into custody, Louie Clifton Weathers charged with
me this date November 21, 2019.

DETAIN ON charge(s) of: DUAC 1ST OFFENSE \$1,224.50

OPEN CONTAINER \$257.50

TOTAL BOND SET: \$1,482.00 10% Option

COURT DATE: Wednesday, December 18, 2019 at 10:00 AM
5200 East Jim Bliton Blvd., St. George SC

And you the said KEEPER are required to receive the said Louie Clifton Weathers into your custody in the said
jail and there safely keep until he be thence delivered by due course of law.

Given under my Hand and Seal, at St. George, SC on November 21, 2019.


Judge's Signature: Ryan D. Templeton

DORCHESTER COUNTY SHERIFF'S OFFICE

SUMMERVILLE
212 Deming Way, Box #9
Summerville S.C. 29483
Office (843) 832-0300
Fax (843) 832-0308



ST. GEORGE
100 Sears Street
St. George, S.C. 29477
Office (843) 563-0259
Fax (843) 563-0263

SHERIFF L.C. KNIGHT

BOND REQUEST

FILED-RECORDED
6-17-2020
Cheryl Graham
Clerk of Court
Dorchester County

DCSO CASE NUMBER (S): _____

DEFENDANT'S NAME: Louie Clifton Weathers

DATE OF BIRTH: 1-22-76 SSN: 252-59-3952

PRIOR ARREST: YES / (NO) GA SID #: _____ FBI #: _____

ARREST CHARGE # 1: DUAC 1st WARRANT #: _____

BOND RECOMMENDATION: Cash

ARREST CHARGE #2: Open Container WARRANT #: _____

BOND RECOMMENDATION: Cash

ARREST CHARGE #3: _____ WARRANT #: _____

BOND RECOMMENDATION: _____

ARREST CHARGE # 4: _____ WARRANT #: _____

BOND RECOMMENDATION: _____

ADDITIONAL INFORMATION: Cash - lives out of state

ARRESTING OFFICER: Upr Kc Davis SERVED WARRANTS: ML - 11-21-19
Print Name Signature and Date

COUNTY CLERK'S OFFICE SC0110000		DATE/TIME OF ARREST 11-20-19 2314		BOOKING REPORT 1914320		CASE NUMBER 19CH166518	
DEPORTMENT NAME (LAST, FIRST, MIDDLE) Weathers, Louie Clifton						POB W	SEX M
						DATE OF BIRTH 1-22-76	
AGE 43	ETH N	HEIGHT 6'0"	WEIGHT 200	HAIR Bro	EYES Bro	SOCIAL SECURITY NUMBER 252-59-3952	
ADDRESS (NUMBER AND STREET) 4121 Hidden Valley Rd NW						CITY Cleveland	STATE TN
ZIP CODE 37312						PERMITS 413-650-2070	
PLACE OF BIRTH St. George SC				OFFICER'S LICENSE NUMBER 102084373		STATE TN	
EMPLOYER OR OCCUPATION Construction		NEXT OF KIN Brett Elrod		ADDRESS (CITY AND STATE) Mt. Pleasant, SC			
BOOKING OFFICER'S NAME L/CPL KC DAVIS		NUMBER T914	ARRESTING OFFICER L/CPL KC DAVIS		AGENCY SCHP	NUMBER T914	
ARRESTED ARMED ☐ YES ☒ NO WEAPON TYPE: _____							
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFERRED TO OTHER AUTHORITY							
ADDITIONAL CASE NUMBERS _____							
IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C							
CHARGE (A)		CHARGE (B)		CHARGE (C)			
56-5-2933		61-4-110					
CASH		CASH					
DISPOSITION		DISPOSITION		DISPOSITION			
DAYS		AMOUNT		DAYS		AMOUNT	
TIME SERVED		TIME SERVED		TIME SERVED			
BALANCE		BALANCE		BALANCE			
PROPERTY INVADED		PROPERTY INVADED		PROPERTY INVADED			
RELEASE DATE		THIS		RELEASED OFFICER		NUMBER	
						AGENCY RELEASED TO	
SIGNATURE OF RECEIVING OFFICIAL X <i>Cpl [Signature]</i>				430			
REMARKS:				LIST ANY REMARKS BELOW			
DEPORTMENT'S PERSONAL PROPERTY RECEIPT				TOTAL CASH AT TIME OF ARREST →		\$ 39.00 JCW	
QUANTITY	ITEM		QUANTITY	ITEM			
I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.							
X <i>Louie C. [Signature]</i>				<i>[Signature]</i>			
DEPORTMENT'S SIGNATURE AT TIME OF ARREST				OFFICER			
I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.							

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

VS

Louie Clifton Weathers

DEFENDANT

20192401233408-10

CASE NUMBER

IN THE SUMMARY COURT

TRANSMITTAL OF
CRIMINAL APPEAL

As required by Sec. 18-3-40, SC Code of Laws, this information is transmitted to the Court of Common Pleas as the result of an appeal.

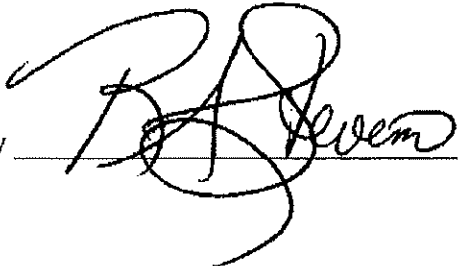
Date of Transmittal: June 16, 2020

Transmitted to: Dorchester County Clerk of Court

Transmitted by: Saint George Magistrate

Case Caption: State of South Carolina vs. Louie Clifton Weathers

Case Number: 20192401233408-10

Received and verified by  on

6-17-2020

Saint George Magistrate
5200 E. Jim Bilton Blvd.
St. George, SC 29477
Phone: (843) 563-0130
Fax: (843) 563-0123

CLERK OF COURT
DORCHESTER COUNTY
SOUTH CAROLINA

2020 JUN 18 PM 3:23

FILED-REC'D

ATTACHMENT G



South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

597 Old Mt. Holly Rd. • Goose Creek, SC 29445

Tel: (843) 953-6040 • Fax: (843) 953-6009

Email: markmoore@scdps.gov

June 10, 2020

VIA ELECTRONIC FILING

The Honorable Becky Stevens,
Chief Deputy Clerk of Court
Dorchester County Clerk of Court's Office
5200 E. Jim Bilton Boulevard
St. George, South Carolina 29477

Re: Magistrate Criminal Appeal: State of South Carolina v. Louie Weathers
UTT Nos.: 20192401233408-10

Dear Ms. Stevens:

Attached, please find the appeal on behalf of the State of South Carolina in the above-captioned matters from an Order Denying the State's Motion for Reconsideration issued by the Honorable Victor G. Stephens of the Dorchester County Magistrate Court on June 3, 2020. Additionally, I am including a Certificate of Service evidencing service of the same upon Judge Stephens and Attorney Jerry Theos, counsel for Respondent.

Respectfully,

Mark S. Moore

Attachment- Notice of Appeal and Appeal

cc: The Honorable Victor G. Stephens
Jerry Theos, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
State of South Carolina,)
Appellant,)
v.)
Louie Weathers,)
Respondent.)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

C/A No. 2020-CP-18-_____

Ticket Nos.: 20192401233408-10

Charges: DUAC 1st, Open Container,
and Seatbelt Violation

**NOTICE OF APPEAL
AND APPEAL**

The State of South Carolina ("Appellant") appeals the final Order issued by the Honorable Victor G. Stephens, Dorchester County Magistrate, on June 3, 2020. The Court's Order denied Appellant's request for reconsideration of the dismissal of the above-referenced charges brought against Louie Weathers ("Respondent") by Lance Corporal K.C. Davis of the South Carolina Highway Patrol following his arrest on November 20, 2019.

On January 29, 2020, the Court dismissed Respondent's charges of Driving with Unlawful Alcohol Concentration ("DUAC"), Open Container, and Seatbelt violation after a motion from Respondent's counsel. A review of the record revealed the basis for the dismissal was Appellant's untimely disclosure of evidence in response to Respondent's Rule 5/ Brady Motion. Specifically, the State's Response was made twelve (12) days beyond the prescribed period of thirty (30) days, pursuant to Rule 5(a)(3) of the South Carolina Rules of Criminal Procedure. Furthermore, the record confirms that Trooper Davis was unaware Respondent was not in receipt of the State's Rule 5 Response within the thirty-day time limit. Trooper Davis

previously submitted the State's Rule 5 Response to the Solicitor's Office in December of 2019 pursuant to a new discovery distribution process intended to ease the burden on the courts and defendants by mailing Rule 5 responses directly to the defense. Upon learning of the omission at the January 29, 2020 court proceeding, Trooper Davis promptly provided the State's Rule 5 Response to Respondent's counsel.

Therefore, Appellant asserts there was no basis for such a severe sanction in this matter because:

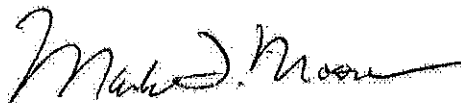
- (1) the delay was the result of a mistake, rather than an intentional act or bad faith;
- (2) Respondent suffered no prejudice as a result of the delay; and
- (3) even if the Court found Respondent stood to suffer prejudice as a result of the delay, a more appropriate remedy under the Rule 5 was available to the Court to address the concern.

See SCRCrimP Rule 5(d)(2); United States v. Hastings, 126 F.3d 310 (4th Cir. 1997); and State v. Wilkins, 310 S.C. 81 (Ct.App.1992).

Based upon the foregoing, Appellant respectfully requests that this matter be scheduled for oral argument before the Dorchester Court of Common Pleas, and that following such argument, the decision of the Magistrate Court be overturned and the case be remanded for a trial on the merits of the original charges.

[SIGNATURE LINE TO FOLLOW]

Respectfully Submitted,



Mark S. Moore, Lowcountry Prosecutor
South Carolina Bar No. 16669
South Carolina Department of Public Safety
Office of General Counsel
597 Old Mount Holly Road, Suite 304
Goose Creek, SC 29445
(843) 953-6040
markmoore@scdps.gov
Attorney for the Appellant

This 10th day of June, 2020
Goose Creek, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
State of South Carolina,)
Appellant,)
v.)
Louie Weathers,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

C/A No. 2020-CP-18-_____

Ticket Nos.: 20192401233408-10

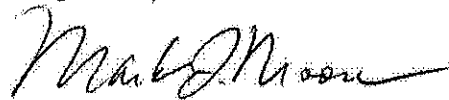
CERTIFICATE OF SERVICE

I do hereby certify that I provided a true and correct copy of the foregoing Notice of Appeal and Appeal, via United States Mail, postage prepaid, and by emailing the same, addressed to the Magistrate and counsel for the Respondent, on this 10th day of June, 2020, as follows:

The Honorable Victor G. Stephens
Dorchester County Magistrate Court
5200 E. Jim Bilton Blvd.
St. George, SC 29477
jstephens@dorchestercountysc.gov

Jerry Theos, Esq.
Theos Law Firm, LLC
11 State Street
Charleston, SC 29401
jerry@theoslaw.com

Respectfully Submitted,



Mark S. Moore, Lowcountry Prosecutor
South Carolina Bar No. 16669
South Carolina Department of Public Safety
Office of General Counsel
597 Old Mount Holly Road, Suite 304
Goose Creek, SC 29445
(843) 953-6040
markmoore@scdps.gov

ATTACHMENT

H

1 STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT

2 COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT

3 TICKET NUMBERS: 20192401233408-DUAC

4 STATE OF SOUTH CAROLINA

20192401233409-Open Container and

5 versus

20192401233408-Seatbelt Violation

6 LOUIE CLIFFTON WEATHERS,

7 Defendant.

TRANSCRIPT OF 6.3.20 HEARING

8 B E F O R E:

9 The Honorable Victor G. Stephens

10
11 A P P E A R A N C E S:

12 Mark S. Moore, Esquire

13 SC Department of Public Safety

14
15 Jerry N. Theos, Esquire

16 John Guerry, Esquire

17 Attorneys for Defendant

18

19

1 **The Court:** Okay, today is June the 3rd, approximately 10:45 AM, 2020.

2 This court is called to order. We have a couple things this morning to take care of.

3 First of all I'd like to go ahead and have this motion for the -- (inaudible) -- Okay,

4 it looks like it's back to working now. We're going to proceed on, um, defense

5 attorney for the defendant, you've heard the motion from the State.

6 **Mr. Theos:** Yes sir. If it please the court, Judge --

7 **The Court:** Yes sir.

8 **Mr. Theos:** Just to remind your Honor, and also for the purposes of the

9 record, I'm Jerry Theos, T-h-e-o-s, and this is John Guerry, G-u-e-r-r-y. Um, your

10 Honor, first, first of all, Mr. Moore did not accurately recite the facts in the

11 chronology. So, I think, I'll just remind the court -- and I'm sorry, my reading

12 glasses keep fogging up. The date of arrest was November the 20th of 2019. We

13 first sent our discovery request on December the 9th, 2019. We sent them to the

14 Trooper, we sent them also to the headquarters, which is where we were supposed

15 to send them. The first court date, as you may recall, Judge, was December the

16 18th, 2019. On that date, on that date Trooper Davis said she had not received our

17 discovery request, although it was properly sent and properly mailed, et cetera and

18 we have documentation in verification of that. As an accommodation to Trooper

19 Davis, we agreed to a postponement of that bench trial. The case was set for trial

20 that day, but because she did not receive our discovery request and because we did

1 not receive the discovery materials from the State, we agreed to continue the case,
2 continue the trial until January 29th. On that same day, Judge, on December the
3 18th, we emailed Trooper Davis copies of all the discovery requests. There were
4 two discovery requests. We emailed those to her. She responded, and it's Exhibit C
5 in our Return to the Motion, she responded via email acknowledging that she
6 received it on December the 18th.

7 In spite of having our discovery request on December the 18th, from that
8 date forward through the date of the trial, which again was set by mutual
9 agreement, we received nothing. The case was scheduled for trial in this court on
10 January the 29th. This was not an oversight, we just didn't receive the discovery.
11 Your honor, there is, and we were prepared to try the case, we were here to try the
12 case, so don't talk about the prejudice. There is no such thing as a motion to
13 reconsider. The rule, your honor, is, and that this was brought under, the motion by
14 the state, is rule 59E. And what it states, the pertinent part, Judge, is: "A party may
15 wish to file such a motion when he or she believes the court has misunderstood, the
16 court has failed to fully consider, or perhaps failed to rule on an argument or issue,
17 and the party wishes the court to reconsider or rule on it." So, I understand that
18 they're not pleased with your ruling on the motion to dismiss, but that in and of
19 itself is not a basis for the court to reverse its ruling. You heard arguments of
20 counsel, you had a motion to dismiss before you, you heard all the facts, you heard

1 the chronology, the timeline related to the failure of the State to produce discovery,
2 and you ruled on it. And it was within your discretion in accordance with Rule 5 of
3 the South Carolina Criminal Rules of Procedure, it was within your discretion,
4 because you had the right. You know, Mr. Moore says, well that's all we sought.
5 Absolutely, we sought a dismissal because that's what justice demanded at the
6 time. You heard our arguments. You didn't continue the case, you had the
7 discretion to continue it. You had discretion that they order to produce it, and
8 recess and come back another day. You had those options. We asked that the case
9 be dismissed because of the deprivation of rights associated with the failure to
10 produce the discovery. And specifically, that Rule 5 states that you have the
11 discretion to enter such other order as the court deems just and appropriate. You
12 made a decision that you deemed just and appropriate, and the State just doesn't
13 like it, I mean that's the bottom line here.

14 Now, your Honor, Mr. Moore made a good deal out of arguing that there
15 was really no, no prejudice. Mr. Moore was in private practice. Mr. Moore was a
16 former public defender. Mr. Moore is a lawyer. He understands that in order to
17 properly prepare for trial, in order to present a case, in order to confront and cross
18 examine witnesses, we are entitled not only to all the evidence the State intends to
19 produce that is incriminating as to the defendant and is helpful as to the
20 prosecution's case, but also all exculpatory information, that which may tend to

1 prove innocence, or infer the innocence of the defendant. We have a right to those
2 materials. We appeared to try the case, but they hadn't produced those materials.
3 That put us at a distinct disadvantage in trying the case. There was no way that the
4 case could be tried on the 29th, the date it was set, without those discovery
5 materials. And, Mr. Moore is aware of that, and perhaps Trooper Davis isn't
6 because Trooper Davis is not a lawyer. I get that, I understand. But these rules are
7 in place for a reason. Rules are rules. Rules are there to be complied with.

8 If you look at, you know Mr. Moore says well it's drastic, it was a last
9 resort. Well, if you look at the DUI laws that were specifically enacted related to
10 video, to video of the arrest site, the incident site, your Honor, our courts in this
11 state have routinely dismissed cases because the State has failed to produce those
12 videos. And our appellate courts have upheld those decisions, those dismissals. We
13 not only have a failure to produce the videotape in this case, for the trial date,
14 which was late. We have a failure to produce any discovery materials. How in the
15 world can we prepare our case, and be prepared to go forward into trial without
16 those materials? You heard all that information, you heard the evidence that was
17 presented related to the failure of the State to produce those discovery materials,
18 and you made a decision that was in accordance and consistent with Rule 5 of the
19 South Carolina Rules of Criminal Procedure. Your Honor, in our opinion you had
20 no choice, granted you had the discretion, but under the circumstances, under the

1 facts as they were presented to you, and as they existed, you did what you believed
2 was appropriate under the circumstances, and we believe it was appropriate as
3 well. I understand they don't like it, but it was a sound, well reasoned decision and
4 there is no basis to reopen, no basis to amend as they requested, no basis to
5 reconsider their motion. Their motion should be denied, Judge.

6 **Mr. Moore:** Your Honor if I may respond. A couple things, first of all, he
7 keeps referring to the trial date, and that they were prepared to go forward at trial.
8 Obviously they couldn't have been prepared to go forward in trial because of the
9 discovery issue. So to say that they were coming up here to try the case, is, is just -
10 - I think that's creating this illusion that they were in this position that they were
11 being prejudiced because nobody was going to require them or expected them to be
12 able to try the case under the circumstances. Again, this was a situation where it
13 wasn't done with intent, it wasn't done with any malice, the Trooper turned the
14 discovery over to the solicitor under the new system, the new system had not
15 caught up. Unfortunately there was a delay, nobody's denying that, but again,
16 going back to the dates, I don't think I was incorrect about the dates. I understand
17 he was arrested on the 20th of November. I understand they made their discovery
18 request on the 9th of December. She came to court on the 18th of December, she
19 had not seen that request. That doesn't mean they didn't make the request, that
20 doesn't mean they didn't send it. But again, that wasn't even a violation of

1 discovery under that 30 day rule. The violation occurred on the 29th, but again no
2 one was going to force them to go to trial, as I understand it his client wasn't even
3 present for the hearing, and I know that we discussed what happened beforehand,
4 but again I think he's opened the door to that issue, because he's saying on the one
5 hand he didn't have the information he needed to make those decisions, on the
6 other hand he was willing to talk about it.

7 **Mr. Theos:** Your Honor, again, you've already sustained my objection
8 related to any discussions with this Trooper, and now Mr. Moore improperly and,
9 which is astounding to me that another lawyer, in spite of your ruling sustaining
10 my objection, is attempting again to talk about something that he knows is not
11 properly before the court and he can't talk about it.

12 **Mr. Moore:** No, I was saying he's opened the door because he's making
13 that argument. The other issue is, is that he's talking about what I know, and what I
14 know as a lawyer and what I should know as a lawyer. If we're going to go down
15 that path, he knows as a lawyer that there were other remedies available, but he
16 didn't present that in the argument. What he said was, "This is the remedy." His
17 exact quotes, and that's why I wanted to move this audio in, to the court, was that
18 basically "the discovery at the hearing does not cure the fault. The point is that it
19 wasn't provided in a timely fashion." He said "the law is clear that if it's not we are
20 entitled to a dismissal." That's not what the law says. The law says there's all these

1 different remedies, and again, the law is that that's the most drastic of them, and
2 you have to show prejudice to have that. Again, there was no showing of actual
3 prejudice, the case could've been continued, he wouldn't have been in any worse
4 position for it, it was inconvenient for him to come up here that day, it was
5 inconvenient for everybody, I understand that. That could've been avoided if he
6 had simply asked to have the case continue or mentioned that he had not gotten the
7 discovery, I do not think anybody would've objected to that. It was reasonable. But
8 that was not what the request was, it was basically "I'm going to wait till we get up
9 here, I'm going to ask for something, if I don't get it I'm going to drop a motion."
10 And that's what happened. And so, the State's position is yeah we don't like it
11 because we don't think that it was an appropriate remedy under the circumstances,
12 we think it was extreme. And so we're asking the court to reevaluate that, and also
13 the fact that there was no actual prejudice to the defendant, which would be the
14 basis for, basically, dismissing the case.

15 **The Court:** Thank you, sir.

16 **Mr. Moore:** Thank you, your Honor.

17 **The Court:** Anything else?

18 **Mr. Theos:** The only thing I would add is that, first of all I disagree, there
19 doesn't have to be a showing of prejudice. Second of all, there are, Mr. Moore is
20 correct, there were other options, and yes we did ask and request and move for a

1 dismissal, and you made the choice to grant that. You had those options, we asked
2 for the relief that we believed was appropriate, and you granted our request. I
3 believe that, certainly considering the facts, considering the circumstances,
4 considering the law, considering the applicable rule, and also case law, I believe
5 that your ruling was sound, it was appropriate, and it should be upheld and the
6 motion should be denied.

7 **The Court:** One more time, anything else?

8 **Mr. Moore:** I don't think there's anything to add, other than I think, you
9 know, from our standpoint as soon as the Trooper realized the oversight, she tried
10 to cure it, and again in that course of the discussion in the last hearing, the
11 argument was made that the default couldn't be cured, well you can't go back and
12 undo the fact that it was 12 days late, but again, the issue becomes whether they
13 were prejudiced by the 12 day delay. And, while, you know, we, no one is
14 disputing that we want to have these things in by 30 days, and certainly we will
15 work hard to make sure that doesn't happen in the future, the delay did not cause
16 any prejudice to the defendant. Any prejudice that the defendant is alleging is
17 contrived, because of the fact that they came up here saying that they were gonna
18 try a case, they knew they weren't gonna try the case, so.

19 **The Court:** Thank you. Again, as I said in the first hearing, this is no
20 reflection against Trooper Davis. I think she did her job, what she was supposed to

1 do. And wherever, however they do this undoubtedly dropped the ball getting the
2 motion to the defendant and his client. Therefore, I'm not going to elaborate a
3 whole lot on it, I'm standing by my first ruling, this motion is denied.

4 **Mr. Theos:** Thank you, Judge.

5 **Mr. Moore:** Your Honor, may I ask the court to just, at least explain what
6 the prejudice was.

7 **The Court:** Uh, the motion is denied. Court's adjourned.

8 (END OF TRANSCRIPT OF RECORD)
9

ATTACHMENT

I

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

STATE OF SOUTH CAROLINA,)

v.)

LOUIE WEATHERS,)

Defendant.)

IN THE MAGISTRATE'S COURT

Ticket Nos.: 20192401233408-10

Charges: DUI, 1st, Open Container, and
Seatbelt Violation

MOTION TO RECONSIDER AND REOPEN

TO: THE HONORABLE VICTOR G. STEPHENS

COMES NOW the State of South Carolina, by and through the undersigned attorney, who respectfully move this Court to reconsider its Order dismissing the above-referenced charges and to reopen the above-captioned matter.

On January 29, 2020, this case was scheduled for a proceeding before this Court in the St. George Magistrate's Court. During the proceeding, the defense made a motion to dismiss because it received discovery twelve (12) days after the 30-day timeframe described in Rule 5 of the South Carolina Rules of Criminal Procedure ("hereinafter Rule 5"). In response, Trooper K.C. Davis of the South Carolina Highway Patrol argued that (1) discovery was served on the defense immediately prior to the hearing; (2) delay in disclosure of evidence was unintentional; and (3) dismissal is not the proper remedy for a failure to comply with Rule 5. Following the motion, the Court granted the defense's request for dismissal.

Rule 5 outlines the requirements for disclosure of evidence in criminal proceedings. Under Rule 5(a)(3), the prosecution is required to respond to a defense request for disclosure no later than thirty (30) days after the request is made, unless the court orders otherwise. Rule 5(d)(2) outlines

A TRUE COPY
MAGISTRATE
DORCHESTER COUNTY
DATE 2/14/2020
VG Stephens

the remedies a court may impose in response to a failure to comply with Rule 5. These remedies include:

1. ordering such party to permit the discovery or inspection,
2. granting a continuance,
3. prohibiting the party from introducing evidence not disclosed, or
4. entering such other order as the court deems just under the circumstances.

SCRCrimP Rule 5(d)(2). Notably, noncompliance with Rule 5 does not include dismissal of a case in its entirety as a prescribed remedy.

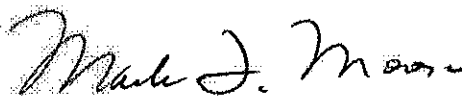
Should a court entertain the idea that dismissal is a just remedy under the circumstances, it must first make a determination that a defendant has been prejudiced by the noncompliance; or in this case, that the defendant was prejudiced by the failure to receive discovery 12 days sooner. The South Carolina Court of Appeals upheld the prejudicial showing requirement in *State v. Wilkins*. See *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (S.C. App. 1992). The *Wilkins* Court specifically established that the burden is on the defendant to establish how he has been prejudiced by the delay. *Id.* Further, the Court may weigh whether the defendant is in a "different position on the date of disclosure than he would have been had disclosure been timely made." *Id.* In the absence of a showing of actual prejudice to a defendant, a Rule 5 violation cannot be the basis for dismissal. A similar analysis has been found applicable to *Brady* material. (Failure to disclose *Brady* material is reversible error only when its omission deprives the defendant of a fair trial. *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999)).

In our case, the defense sought dismissal, the most extreme sanction, against the prosecution for a failure to provide a Rule 5 response in a timely manner. In seeking dismissal, the defense argued that dismissal was the only reasonable option to cure the prosecution's delay in

disclosure, even though Rule 5 provides for several other less punitive options. Significantly, at no point did the defense articulate how it had been prejudiced by the prosecution's delay. Nor did the defense argue that the delay would cause it to be denied a fair trial.¹ In fact, the record does not even indicate that a trial was scheduled to take place the day the motion was heard or even any time in the near future. Even if the Court finds that dismissal is the only just and proper remedy to cure the delay in this case, dismissal would not be appropriate without a finding of prejudice.

Based on the foregoing, the State moves the Court to reconsider its prior ruling, reopen the case, and reschedule the matter to be heard on its merits.

Respectfully Submitted,



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February 4, 2020

¹ Again, the defense was served with the prosecution's complete Rule 5 response prior to the hearing before the Court.

ATTACHMENT J

1 STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT

2 COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT

3 TICKET NUMBERS: 20192401233408-DUAC

4 STATE OF SOUTH CAROLINA

20192401233409-Open Container and

5 versus

20192401233408-Seatbelt Violation

6 LOUIE CLIFFTON WEATHERS,

7 Defendant.

TRANSCRIPT OF 1.29.20 HEARING

8 B E F O R E:

9 The Honorable Victor G. Stephens

10
11 A P P E A R A N C E S:

12 Lance Corporal K.C. Davis

13 South Carolina Highway Patrol

14
15 Jerry N. Theos, Esquire

16 John Guerri, Esquire

17 Attorneys for Defendant

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1 **The Court:** Ok, we have a defendant, Louis Weathers. Is that correct?

2 **Mr. Theos:** That's correct, your Honor.

3 **The Court:** And, for the record, counsel representing Mr. Weathers will you
4 state your name?

5 **Mr. Theos:** Jerry, J-e-r-r-y, Theos, T-h-e-o-s. This is John Guerri, G-u-e-r-
6 r-y, he's a lawyer in my firm.

7 **The Court:** Thank you. And Trooper, we have South Carolina Highway
8 Patrol Trooper Davis representing the State. And the charges are... is that a
9 DUAC?

10 **Trooper Davis:** Yes, your Honor.

11 **The Court:** And a seatbelt, and a[n] open container.

12 **Trooper Davis:** Yes, your Honor.

13 **The Court:** Alright, are you ready to proceed with...

14 **Mr. Theos:** Your Honor, we have a motion.

15 **The Court:** Okay, go ahead.

16 **Mr. Theos:** Your Honor, you have the ticket, it reflects what the first court
17 date is, if you could just...

18 **The Court:** It was on 12/18.

19 **Mr. Theos:** Your honor, our motion is to dismiss the cases, and is based
20 upon the failure of the... I don't want to blame the Trooper because I don't know
21 that it's her fault, but we filed on December the 10th, we filed our initial discovery
22 request. Mr. Guerri in my office appeared here in court on the 18th, and the
23 Trooper advised him that she had not received the discovery, even though we had
24 sent it to the Highway Patrol headquarters. Trooper Davis then gave Mr. Guerri
25 her email address, he emailed her that day our discovery request. Up until today we
26 had not received those requests. I spoke with Trooper Davis outside before we
27 began and told her that we still haven't received the discovery, at which point she
28 left. She has now brought what appears to be some response to the discovery, we
29 haven't had a chance to look at it, but our motion is to dismiss because pursuant to
30 the rules, rule 5, the State, whether in it's in a magistrate's court or in the court of
31 general sessions, has thirty days to provide the discovery responses. And those

1 responses have not been provided. And although some courts may believe, and you
2 may believe, that that is a drastic remedy to dismiss a case, it is in accordance with
3 the rule and there's plenty of case law to support that proposition and that premise.
4 In the event that discovery is not provided, the defendant is entitled to a dismissal
5 of those charges. Now, the Trooper again has just given us what appears to be a
6 response to the discovery, again, it looks like an incident report and a DVD. We
7 don't know what's on it because, you know we haven't had a chance to look at it.
8 And I understand that, perhaps the court's inclination is, "Well, she's now cured
9 the default by handing it to you," but that doesn't necessarily cure the default. The
10 point is that it wasn't provided in a timely fashion, and the law is clear that if it's
11 not, we're entitled to dismissal. The Court, I've been practicing law a long time,
12 about 40 years, and although I understand the Trooper's dilemma, and apparently
13 the fault lies with the Highway Patrol and not necessarily with her, but the problem
14 is, it's prejudicial to the defendant. We have not had an opportunity to look at
15 anything. We have not been provided the discovery, and that discovery should've
16 been provided. And it's not fair, it's a violation of due process, and I believe that
17 the court should dismiss the charges.

18 **The Court:** Thank you, sir. Trooper Davis, raise your right hand. First, do
19 you affirm to tell the truth, the whole truth and nothing but the truth, so help you
20 God?

21 **Trooper Davis:** Yes, your Honor.

22 **The Court:** Go ahead.

23 **Trooper Davis:** I do have a copy of the letter they sent on December 10th,
24 they sent it to the court up here, I never received it, we had court, they then emailed
25 me the copy. I have been on night since before New Year's, I just went back to day
26 shift Friday. I did fulfill the rule 5 and gave it to the supervisor who was supposed
27 to turn it in, I called Ms. Darlene, she didn't have it, I couldn't find it here. It was
28 completed, I don't know where it ended up. I just now made another copy for
29 them, so they have my complete in-car body camera, they have the incident report,
30 they have the data mapster, they have notice of suspension, booking report and
31 implied consent. They have my complete Rule 5 I just turned in to them. Your
32 Honor, I apologize, I don't know what happened to the first copy. Again, I was on
33 nights and unable to deliver it myself, so I put it in the hands of a supervisor, and
34 as to what happened there, I don't know. But he has now been provided a complete
35 copy of the Rule 5.

1 **The Court:** Thank you.

2 **Mr. Theos:** Your honor, two points. A right doesn't cure the wrong, first of
3 all. And secondly, Trooper Davis is incorrect. We have a certificate of service
4 showing that this was in fact sent to her at the headquarters in Waltherboro. And
5 also, and if I could hand it over to the court, on December 9th. So to say that it
6 wasn't sent or it wasn't received is just not true. It was received, and it was sent
7 properly, and then in addition to that, it was sent on December the 18th, and
8 Trooper Davis sent an email response confirming that she had received it. Again I
9 don't blame Trooper Davis, it appears that it is a problem with her headquarters,
10 but nonetheless, the discovery was not provided in a timely fashion, and we
11 operate on the basis of rules and deadlines, and that deadline wasn't met.

12 **The Court:** Yes sir.

13 **Trooper Davis:** Your Honor, I have a copy of the December 10th address to
14 the court.

15 **The Court:** You have the what?

16 **Trooper Davis:** The one that he said December 10th, "It is addressed to the
17 court."

18 **The Court:** Have you seen this one, this is the one that...

19 **Trooper Davis:** Um, that was not sent certified to me. I did not sign that I
20 received it, so, I don't know.

21 **The Court:** Well, Counsel said he sent it to headquarters, right?

22 **Mr. Theos:** We sent it to headquarters and we sent it to the court, and, your
23 Honor, Trooper Davis is overlooking the fact that on December the 18th, she
24 received it and acknowledged receipt, and this is now 42 days later, we're just
25 getting it. It was not complied with in a timely fashion. The rules are there for a
26 reason. And I understand that Trooper Davis doesn't like the fact that someone else
27 is at fault in doing this, but regardless of who's at fault it wasn't done. We have
28 rules for a reason, whether it's when I was prosecuting cases or defending cases,
29 those rules are there for a reason and they need to be upheld.

30 **The Court:** Thank you sir.

31 **Trooper Davis:** Your honor, the 18th was 11 days ago, I don't see --

1 **Mr. Theos:** December the 18th, your Honor.

2 **Trooper Davis:** Right, and you said 30 days. Ok, alright so we're arguing
3 about 12 days. I don't see how due process in 12 days is going to make a difference
4 when I have in fact, I can only provide what I am allowed to. In fact, now
5 everything is supposed to go through the solicitor, so if they did not send a Rule 5
6 request to the solicitor, who has a copy of it as well, they could've gotten it that
7 way as well. This should've been more of a motion to compel, not dismiss all of
8 the charge[s]. Which if he had made a motion to compel, he would have it, as I
9 have provided it for him now today.

10 **Mr. Theos:** Your Honor, this is not over 12 days. This is -- that's not what
11 this is about. This is about a failure to comply with the rules. And there has to be
12 sanctions when a rule is not complied with. And this is no poor reflection on the
13 Trooper; this is perhaps a poor reflection on headquarters for not complying, but
14 the bottom line is there was not compliance. And there should've been.

15 **Trooper Davis:** Your honor that should be in the form of a motion to
16 compel.

17 **The Court:** Excuse me? What?

18 **Trooper Davis:** I believe that should be a motion to compel. If they are
19 saying they didn't get the evidence, why wasn't a motion to compel --

20 **Mr. Theos:** Your Honor, I appreciate the Trooper's position but that is not
21 the appropriate remedy. The appropriate remedy -- the appropriate course of action
22 is a motion to dismiss. We filed it twice, so they had two opportunities to produce
23 it, it still wasn't produced. So this isn't over 12 days, this is over a failure to
24 comply with the rules.

25 **The Court:** Let me ask one question now. Did you request a jury trial,
26 Counsel, along with the Rule 5 or you just requested the Rule 5?

27 **Mr. Theos:** Your Honor, what we did was, when Mr. Guerry came here on
28 the original court date and advised the Trooper that we had not received the
29 discovery, so that was the first warning, advised the Trooper we didn't have the
30 discovery. She said she didn't get it. We accepted that, even though we provided
31 documentation that it was sent to her headquarters as well as the court. So that very
32 day on the 18th, it was emailed to her and she responded with an email that she had
33 received it.

1 **The Court:** Okay.

2 **Mr. Theos:** We did not request a jury trial at that point because we were
3 giving the Trooper an opportunity to respond to the discovery.

4 **The Court:** Alright, anything else Trooper, before I go rule?

5 **Trooper Davis:** No, your Honor.

6 **The Court:** Trooper Davis and Counsel, are you finished with your --

7 **Mr. Theos:** I am, your Honor.

8 **The Court:** I have to agree with the Trooper on one thing, I don't think this
9 is your fault, Trooper Davis.

10 **Trooper Davis:** Thank you.

11 **The Court:** I feel like, well I'm not going to say this out loud, well I am
12 going to say it. I've been having some problems over the last 6-8 months getting
13 the information to the right location for the Rule 5 requests. It was straightened up
14 and supposed to go to headquarters instead of coming through our courts, and
15 having a third party get involved with it, which, we had some, some situations
16 where it wasn't working. So the command headquarters agreed to send it to them,
17 for the trooper, I mean for the defense, to send it to headquarters and they would
18 get it to the right officer. That's not happening on time, on a timely schedule.
19 Therefore, these cases are being dismissed because it's not following the law with
20 the Rule 5 with the 30 day. Case is dismissed.

21 **Mr. Theos:** Thank you, your Honor.

22 **The Court:** Thank you. You have your copy, sir?

23 **Mr. Theos:** Yes sir.

24 **(END OF TRANSCRIPT OF RECORD.)**
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