

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case Nos. 2020-CP-18-00905

The State,

Respondent,

v.

Louie Weathers,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN REVERSING THE MAGISTRATE COURT'S DISMISSAL OF APPELLANT'S CRIMINAL CHARGES BASED ON THE STATE'S FAILURE TO TIMELY DISCLOSE MATERIAL EVIDENCE PRIOR TO THE SCHEDULED TRIAL?

STATEMENT OF THE CASE

On November 20, 2019, Lance Corporal K.C. Davis (Trooper Davis) of the South Carolina Highway Patrol (SCHP) arrested Louie Weathers (Appellant) for Driving with an Unlawful Alcohol Concentration (DUAC), .10 but less than .16, first offense; Open Container; and a Seatbelt Violation. (R. Ticket Nos. 20192401233408–410).

On January 29, 2020, Appellant proceeded to a bench trial before the Honorable Victor G. Stephens (Dorchester County Magistrate Judge). (R. Transcript of Proceeding). Jerry Theos, Esq., and John Guerry, Esq., (Defense Counsel) represented the Appellant, and Trooper Davis appeared on behalf of the State. Defense Counsel moved to dismiss the charges pre-trial based on the Trooper Davis's failure to comply with Rule 5 of the South Carolina Rules of Criminal Procedure. Magistrate Judge Stephens ultimately granted the motion to dismiss at the conclusion of the hearing.

In response, Mark S. Moore, Esq., of the South Carolina Department of Public Safety (SCDPS) filed a Motion to Reconsider and Reopen on February 4, 2020. (R. *). Defense Counsel filed their Response in Opposition to the State's Motion to Reconsider and Reopen on June 2, 2020, explaining why the Magistrate Court properly granted the motion to dismiss. (R. *).

On June 3, 2020, Magistrate Judge Stephens presided over a hearing on the State's pending motion to reconsider. (R. * Transcript of Proceeding). Defense Counsel represented the Appellant, and Mark Moore appeared on behalf of the State. After hearing arguments, Magistrate Judge Stephens denied the State's motion to reconsider.

On June 10, 2020, the State filed a Notice of Appeal to the Dorchester County Court of Common Pleas along with the grounds for appeal. (R. *; Case No. 2020-CP-18-

00905). Magistrate Judge Stephens filed the Return as required on June 17, 2020. (R. Return and attachments). The State subsequently filed a brief in support of its appeal to the circuit court on July 16, 2020, and Defense Counsel filed a brief in support of affirming the Magistrate Court's ruling on July 17, 2020. (R. Appellant's Brief and Respondent's Brief).

On July 20, 2020, Appellant appeared before the Honorable Diane S. Goodstein for a hearing via WebEx on the pending appeal from the Dorchester County Magistrate Court. (R. * Transcript of Proceeding). Defense Counsel represented the Appellant, and Mark Moore appeared on behalf of the State. After hearing arguments, Judge Goodstein reversed the Magistrate Court's decision to dismiss the charges and instructed the State to draft a proposed order.

On July 31, 2020, the State filed the Proposed Order for Judge Goodstein's review and consideration. (R. *). Defense Counsel subsequently filed objections to the proposed order and moved to alter or amend the written order on August 3, 2020. (R. Respondent's Objections to Appellant's Proposed Order).

On November 10, 2020, Judge Goodstein issued a final Order upholding her previous ruling to reverse and remand the case to the Magistrate Court for a new trial. (R. *). Appellant timely filed a Notice of Appeal in this Court on November 13, 2020.

This appeal follows.

STANDARD OF REVIEW

“In criminal appeals from magistrate . . . court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception.” *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001); *See* S.C. Code Ann. § 18–3–70 (2014) (“The appeal [from the magistrate court in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law.”). This court will review the decision of the circuit court for errors of law only. Therefore, the circuit court is bound by the magistrate court’s findings of fact if any evidence in the record reasonably supports them. *See Henderson*, 347 S.C. at 457, 556 S.E.2d at 692.

RELEVANT FACTS

On November 20, 2019, Trooper Davis arrested Appellant and provided Uniform Traffic Tickets listing the original “Date of Trial” for December 18, 2019. (R. Ticket Nos. 20192401233408–410).

On December 9, 2019, Defense Counsel served a “Request and Motion for Production” and “General Request for Discovery and Production” citing *Brady v. Maryland*, 373 U.S. 83 (1963) and Rule 5, SCRCrimP, on Trooper Davis via “email communication and U.S. mail.” (R. Cover letter and Motions). Defense Counsel appeared on the originally scheduled trial date and agreed to a continuance at Trooper Davis’s request until the next term of court on January 29, 2020. Notably, Defense Counsel emailed Trooper Davis another copy of the previously served motions for discovery that same day because Trooper Davis claimed to have not received the motions. (R. *).

Bench Trial

On January 29, 2020, Appellant proceeded to a bench trial before Magistrate Court, and Defense Counsel moved to dismiss the charges based on the State’s failure to comply with Rule 5, SCRCrimP. (R. 1/29/20 Tr. 1 –7; 1/29/20 Tr. 2, line 19 – 3, line 17). Defense Counsel explained the prior procedural history and notice to the State in support of the motion to dismiss. (R. 1/29/20 Tr. 2, lines 21-26). Defense Counsel also addressed Trooper Davis’s attempt to provide some of the discovery (“incident report and a DVD”) immediately prior to the bench trial:

Up until today we had not received those requests. I spoke with Trooper Davis outside before we began and told her that we still haven’t received the discovery, at which point she left. She has now brought what appears to be some

response to the discovery, we haven't had a chance to look at it[.]

(R. 1/29/20 Tr. 2, lines 25-29; 1/29/20 Tr. 3, line 6). Defense Counsel further argued that the untimely disclosure is “prejudicial to the defendant” because “[w]e have not had an opportunity to look at anything” and “it’s not fair, it’s a violation of due process[.]” (R. 1/29/20 Tr. 3, lines 14-17).

In response, Trooper Davis admitted to receiving the requests for discovery, giving it to her supervisor for disclosure, and providing the discovery to Defense Counsel on the day of trial. (R. 1/29/20 Tr. 3, lines 23-35). Defense Counsel reiterated, “[Y]our Honor, Trooper Davis is overlooking the fact that on December the 18th, she received it and acknowledged receipt, and this is now 42 days later, we’re just getting it. It was not complied with in a timely fashion. The rules are there for a reason.” (R. 1/29/20 Tr. 4, lines 22-26).

Trooper Davis then argued that Defense Counsel should have filed a motion to compel before moving to dismiss. (R. 1/29/20 Tr. 5, lines 15-19). Defense Counsel responded, “The appropriate remedy . . . is a motion to dismiss. We filed it twice, so they had two opportunities to produce [discovery], it still wasn’t produced . . . this is over a failure to comply with the rules.” (R. 1/29/20 Tr. 5, lines 20-24 and lines 27-33). The Magistrate Court inquired as to whether a jury trial had been requested in this case, and Defense Counsel stated they had not moved for a jury trial. (R. 1/29/20 Tr. 6, lines 2-3).

At the conclusion of the hearing, the Magistrate Court addressed the State’s systemic failure to timely disclose evidence and ruled that “these cases are being dismissed because [the State is] not following the law with Rule 5[, SCRCrimP] with the 30 day [requirement for disclosure].” (R. 1/29/20 Tr. 6, lines 11-20).

Hearing on Motion to Reconsider

On June 3, 2020, the Magistrate Court presided over a hearing on the State's pending motion to reconsider. (R. 6/3/20 Tr. 1–10). In response to the arguments presented in the State's motion, Defense Counsel addressed the prejudice created by the State's admitted failure to timely disclose material evidence:

The case was scheduled for trial in this court on January the 29th. This was not an oversight, we just didn't receive the discovery. Your honor, . . . we were here to try the case...

...

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.*** You made a decision that you deemed just and appropriate . . .

...

Mr. Moore [Counsel for SCDPS] ***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.*** There was

no way that the case could be tried on the 29th, the date it was set, without those discovery materials. . . . But these rules are in place for a reason.

(6/3/2020 Tr. 3, line 9 – 5, line 7) (emphasis added).

The State admitted that a discovery “violation occurred on the 29th,” but maintained there was no prejudice to Appellant and other remedies were available to the Court. (6/3/2020 Tr. 7, line 1 – 8, line 14). After hearing arguments, the Magistrate Court found that the State “undoubtedly dropped the ball getting the motion [of discovery] to the defendant and his client. Therefore, . . . I’m standing by my first ruling, this motion [to reconsider] is denied.” (6/3/2020 Tr. 10, line 1-3).

State’s Notice of Appeal

On June 10, 2020, the State filed a Notice of Appeal to the Circuit Court. (R. *). The State alleged that “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) [Appellant] suffered no prejudice as a result of the delay; and (3) even if the Court found [Appellant] stood to suffer prejudice as a result of the delay, a more appropriate remedy under the Rule 5 was available to the [Magistrate] Court to address the concern.” (R. *).

Magistrate Court’s Return

On June 17, 2020, the Magistrate Court filed a Return in response to the State’s notice of appeal to the circuit court and provided, “I denied the motion [to reconsider] based on [the State’s] failure to comply with Rule 5[, SCRCrimP].” (R. Return and attachments). The Magistrate Court also attached the following documents to the Return:

- (1) Uniform Traffic Tickets (Nos. 20192401233408–410), listing the original date of trial as December 18, 2019.

- (2) Cover letter from Defense Counsel dated December 9, 2019, filing the “Defendant’s General Brady and Discovery Motions”, and noting, “[b]y copy of this letter, I am furnishing copies of these motions to Trooper Kristin Davis via email communication and U.S. mail.”
- (3) Defense Counsel’s “Request and Motion for Production” and General Request for Discovery and Production” filed and served upon the State.
- (4) Email correspondence between a paralegal for Defense Counsel and Trooper Davis confirming her receipt of the motions for discovery dated December 18, 2019.
- (5) Summary Court Summons dated December 19, 2019 (“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 A.M.**).
- (6) State’s Motion to Reconsider and Reopen filed on February 4, 2020
- (7) Defendant’s Response in Opposition to the State’s Motion to Reconsider and Reopen filed on June 2, 2020.
- (8) Summary Court Summons dated February 5, 2020 scheduling the Motion Hearing on June 3, 2020 at 10:00 A.M.).

(R. Return) (emphasis in original and emphasis added).

Circuit Court Appeal

On July 16, 2020, the State filed a brief in support of its appeal to the circuit court relying on *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1993). (R. Appellant’s Brief). Specifically, the State claimed that the Magistrate Court abused his discretion in granting the motion to dismiss because the State believed Appellant suffered no prejudice “due to the delay in disclosure of discovery.” (R. Appellant’s Brief).

In response, Defense Counsel filed a brief in support of affirming the Magistrate Court’s ruling on July 17, 2020 and noted “an abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” (R. Respondent’s Brief) (citation omitted). Defense Counsel also pointed out the “[State]

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” and “does not contend that there is no evidence supporting the [Magistrate] court’s finding that a pre-trial disclosure violation occurred.” (R. Respondent’s Brief, page 4).

Defense Counsel argued that “the evidence wholly supported the [Magistrate] court’s dismissal” and was “completely within the discretion of the [Magistrate] court and confines of the law, pursuant to the plain language of Rule 5(d)(2)(4), [SCRCPP]”. (R. Respondent’s Brief, page 4). Defense Counsel also provided that the “[State’s] knowing failure to comply with these mandates deprived [Appellant] of his rights and consequently put him in a position that he could not fairly proceed with the trial of the case.” (R. Respondent’s Brief, page 5). Defense Counsel further noted, “[t]he [Magistrate] court was presented with irrefutable evidence that nothing was produced by [the State] . . . through the mutually agreed upon trial date of January 29, 2020 . . . despite Trooper Davis acknowledging receipt of the discovery requests over 42 days prior to the agreed upon trial date.” (R. Respondent’s Brief, pages 5-6).

Furthermore, Defense Counsel addressed the State’s blatant attempt to interject additional evidence that was not presented to the Magistrate Court during the hearing on the motion to dismiss and argued “that pre-trial negotiations are irrelevant, inadmissible, and inappropriately raised by [the State].” (R. Respondent’s Brief, pages 6). Defense Counsel also argued that Trooper Davis’s decision to reject any pre-trial resolution “only serves to provide *additional* evidence of prejudice against [Appellant], 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.” (R. Respondent’s Brief, pages 6) (emphasis in original). Notably, Defense Counsel emphasized that Trooper Davis never moved for a continuance prior to or after the motion to dismiss, and thus, the State’s untimely argument that a continuance was the appropriate remedy should not be considered by the circuit court. (R. Respondent’s Brief, pages 3 and 7, footnotes 1 and 2).

On July 20, 2020, Appellant appeared before the Circuit Court on the pending appeal to the Dorchester County Court of Common Pleas. (R. 7/20/20 Tr. 1–14). The Circuit Court indicated that it had “reviewed briefs submitted by each side and . . . looked at the return” prior to the hearing. (R. 7/20/20 Tr. 2, lines 2-4). The State conceded its failure to timely disclose discovery but maintained that a continuance would have cured any prejudice to Appellant. (R. 7/20/20 Tr. 2, line 5 – 5, line 7). Defense Counsel then argued, “[t]he State has conceded that there’s no error of law to dismiss a case for a Rule 5 violation” and “[t]here’s also no question that there was plenty of evidence for the Magistrate Court to support his decision of a dismissal.” (R. 7/20/20 Tr. 5, lines 15-20). Defense Counsel further pointed out that Trooper Davis agreed upon a trial date, never moved for a continuance, and argued that the Magistrate Court properly granted the motion to dismiss. (R. 7/20/20 Tr. 5, line 20 – 6, line 8; 7/20/20 Tr. 8, lines 1-3).

The State subsequently referenced *Hastings*¹ and *Wilkins*² arguing that Defense Counsel must show there was actual prejudice to Appellant. (R. 7/20/20 Tr. 8, lines 11-16). This prompted the Circuit Court to inquire as to whether Defense Counsel had any evidence of prosecutorial misconduct, and Defense Counsel replied, “I don’t know if it’s

¹ *United States v. Hastings*, 126 F.3d 310 (4th Cir. 1997).

² *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1993).

our job to present any willful misconduct.” (R. 7/20/20 Tr. 9, lines 10-22). The Circuit Court then asked Defense Counsel whether Appellant was required to provide notice to the State prior to moving for dismissal. Defense Counsel responded, “I don’t think we’re required to [provide notice].” (R. 7/20/20 Tr. 10, lines 10-15).

The Circuit Court then explained its ruling as follows:

I’m going to send this case back for trial. I do think that - - that it is an abuse of discretion. I am going to reverse it for the following reasons: I do not believe that there was any demonstrated prejudice. That a motion to dismiss is an extraordinary remedy and the case law bears that out. I am concerned that . . . there wasn’t notice to the State with regards to the motion to dismiss . . . there doesn’t appear to me to be any evidence of willful conduct on behalf of the State . . . There was no motion to compel . . . which typically occurs prior to a motion to dismiss . . . It would have been a simple matter for the Court to grant a limited continuance to allow for the discovery to have occurred.

(R. 7/20/20 Tr. 10, lines 20 – 11, line 25). Specifically, the Circuit Court held, “I find there was no evidence of any willful misconduct on behalf of the prosecution nor was there evidence of prejudice on behalf of the Defense.” (R. 7/20/20 Tr. 12, line 22 – 13, line 2). The Circuit Court also ruled, “So considering all of these matters and considering that the Court did not entertain any lesser action other than a dismissal, could have been a continuance, there could have been an exclusion of evidence, and the Court - - could have been granted attorney’s fees for Defense Counsel’s trouble to come all the way to St. George for a trial . . . And under these circumstances, I do believe there was an abuse of discretion and error of the law.” (R. 7/20/20 Tr. 13, lines 6-17).

On July 31, the State filed a Proposed Order as instructed by the Circuit Court. (R. Order). Defense Counsel filed timely objections to the proposed order. (R. Respondent’s Objections to Appellant’s Proposed Order). Specifically, Defense Counsel

argued that the Circuit Court applied an erroneous standard of review, was constrained by the “any evidence” standard of review, and Appellant was prejudiced by the State’s admitted failure to timely disclose material evidence prior to the scheduled bench trial. Defense Counsel also argued that the Circuit Court’s reliance on *Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1993) is misplaced because the *Wilkins* opinion is distinct from the facts presented in this case. Defense Counsel further argued that the Circuit Court’s findings should have no effect on the Court’s review of whether there is any evidence to support the Magistrate Court’s decision to grant the motion to dismiss.

On November 10, 2020, the Circuit Court issued an Order upholding her previous ruling to reverse and remand the case to the Magistrate Court for a new trial. (R. *).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN REVERSING THE MAGISTRATE COURT'S DISMISSAL OF APPELLANT'S CRIMINAL CHARGES BASED ON THE STATE'S FAILURE TO TIMELY DISCLOSE MATERIAL EVIDENCE PRIOR TO THE SCHEDULED TRIAL.

“In criminal appeals from magistrate . . . court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception.” *Henderson*, 347 S.C. at 457, 556 S.E.2d at 692; *See* S.C. Code Ann. § 18–3–70. This court will review the decision of the circuit court for errors of law only. *Id.* Therefore, the circuit court is bound by the magistrate court’s findings of fact if any evidence in the record reasonably supports them. *Id.*

Rule 5, SCRCrimP, governs the disclosure of evidence in criminal cases. “Under Rule 5(d)(2), SCRCrimP, where a party fails to comply with Rule 5, the court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the nondisclosed evidence, or *enter such order as it deems just under the circumstances.*” *State v. Kerr*, 330 S.C. 132, 150, 498 S.E.2d 212, 221 (Ct. App. 1998) (citation omitted) (emphasis added). “Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *Id.* (citing *State v. Davis*, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992)).

A. The Circuit Court Erred in Conducting a *De Novo* Review of the Record and by Failing to Review Only Preserved Errors of Law.

In this case, Defense Counsel explained to the Circuit Court, “[t]he State has conceded that there’s no error of law to dismiss a case for a Rule 5 violation”, and “[t]here’s also no question that there was plenty of evidence for [the Magistrate Court] to support his decision of a dismissal.” (R. 7/20/20 Tr. 5, lines 15-20). Defense Counsel

also emphasized that Trooper Davis agreed on the trial date and never moved for a continuance. (R. 7/20/20 Tr. 5, line 20 – 6, line 8; 7/20/20 Tr. 8, lines 1-3).

Contrary to the deferential standard of review, the Circuit Court improperly held: “[C]onsidering all of these matters and considering that the [Magistrate] Court did not entertain any lesser action other than a dismissal, could have been a continuance, there could have been an exclusion of evidence, and the Court - - could have been granted attorney’s fees for Defense Counsel’s trouble to come all the way to St. George for a trial . . . And under these circumstances, I do believe there was an abuse of discretion and error of the law.” (R. 7/20/20 Tr. 13, lines 6-17). *See Henderson*, 347 S.C. at 457, 556 S.E.2d at 692; S.C. Code Ann. § 18–3–70. The Circuit Court improperly conducted its own *De Novo* review of the record and failed to apply the “any evidence” standard of review as required. Therefore, the Circuit Court applied an erroneous standard of review and should not have reversed the Magistrate Court’s ruling simply because it would have decided the case differently. *See Id.*, 347 S.C. at 457, 556 S.E.2d at 692.

Furthermore, the Circuit Court failed to review only preserved errors of law by making findings of fact on issues not specifically ruled upon by the Magistrate Court. The Circuit Court erred in finding the State’s violation of Rule 5, SCRCrimP, “was unintentional” because it had no effect on whether there was any evidence to support the Magistrate Court’s decision to grant the motion to dismiss. *See Id.*; *see also Kerr*, 330 S.C. at 150, 498 S.E.2d at 221 (citing *State v. Davis*, 309 S.C. 56, 419 S.E.2d 820); *Cf. Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999) (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).

The Circuit Court also erred in finding that Defense Counsel had an obligation to notify the State of their intent to move for dismissal because it had not been ruled on by the Magistrate Court and had no effect on whether there was any evidence to support the Magistrate Court’s decision to grant the motion to dismiss. *See Henderson*, 347 S.C. at 457, 556 S.E.2d at 692; S.C. Code Ann. § 18–3–70. The Circuit Court further erred in finding that “the Magistrate had several less severe sanctions available under the circumstances” because it had not been ruled on by the Magistrate Court and had no effect on whether there was any evidence to support the Magistrate Court’s decision to grant the motion to dismiss (particularly when Trooper Davis never moved for a continuance or requested a lesser sanction). *Id.*

Accordingly, the Circuit Court erred in conducting a *De Novo* review of the record and by failing to review only preserved errors of law.

B. The Circuit Court Erred in Reversing the Magistrate Court’s Ruling Because there is Evidence which Reasonably Supports the Magistrate Court’s Finding that the State’s Failure to Timely Disclose Material Evidence Prior to the Scheduled Bench Trial Prejudiced Appellant’s Right to a Fair Trial.

In this case, Defense Counsel originally argued to the Magistrate Court that the State’s untimely disclosure of material evidence was “prejudicial to the [Appellant]” because “[Defense Counsel] have not had an opportunity to look at anything” and “it’s a violation of due process[.]” (R. 1/29/20 Tr. 3, lines 14-17). Defense Counsel also addressed the prejudice created by the State’s admitted failure to timely disclose material

evidence during the hearing on the State's motion to reconsider:

The case was scheduled for trial in this court on January the 29th. This was not an oversight, we just didn't receive the discovery. Your honor, . . . we were here to try the case...

...

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.* You made a decision that you deemed just and appropriate . . .

...

Mr. Moore [Counsel for SCDPS] *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.* There was no way that the case could be tried on the 29th, the date it was set, without those discovery materials. . . . But these rules are in place for a reason.

(6/3/2020 Tr. 3, line 9 – 5, line 7) (emphasis added).

In their brief to the Circuit Court, Defense Counsel noted “[the State] 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” and “does not contend that there is no evidence supporting the [Magistrate] court’s finding that a pre-trial disclosure violation occurred.” (R. Respondent’s Brief, page 4). Defense Counsel also argued that the “[State’s] knowing failure to comply with these mandates deprived [Appellant] of his rights and consequently put him in a position that he could not fairly proceed with the trial of the case.” (R. Respondent’s Brief, page 5).

Furthermore, Defense Counsel noted “[t]he [Magistrate] court was presented with irrefutable evidence that nothing was produced by [the State] . . . through the mutually agreed upon trial date of January 29, 2020 . . . despite Trooper Davis acknowledging receipt of the discovery requests over 42 days prior to the agreed upon trial date.” (R. Respondent’s Brief, pages 5-6). Defense Counsel also argued in its brief that “the evidence wholly supported the [Magistrate] court’s dismissal” and was “completely within the discretion of the [Magistrate] court and confines of the law, pursuant to the plain language of Rule 5(d)(2)(4), [SCRCP]”. (R. Respondent’s Brief, page 4). *See Henderson*, 347 S.C. at 457, 556 S.E.2d at 692; S.C. Code Ann. § 18–3–70.

Despite the evidence supporting the Magistrate Court’s findings, the Circuit 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.” (R. Order dated November 10, 2020). Specifically, the Magistrate Court thoroughly considered the briefs and arguments of both the State and Defense Counsel at two hearings and made its decision to grant the motion to dismiss on a sound evidentiary basis. *See* Rule 5(d)(2), SCR CrimP; *Kerr*, 330 S.C. at 150, 498 S.E.2d at 221 (citing *State v. Davis*, 309 S.C. 56, 419 S.E.2d 820).

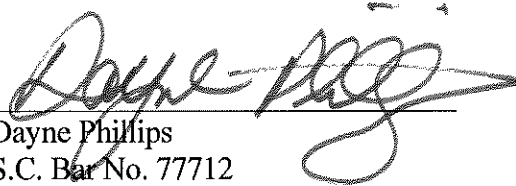
Additionally, the Circuit Court's reliance on *Wilkins* is misplaced, as the *Wilkins* opinion is distinct from the facts presented in this case. *Id.*, 310 S.C. 81, 425 S.E.2d 68. In *Wilkins*, the trial court denied the defendant's motion to dismiss pursuant to Rule 5, SCRCrimP, because *Wilkins* could not show any prejudice caused by the State's delay in complying with the discovery request. Unlike Appellant, who was scheduled for a bench trial, *Wilkins* "was in no different position on the date of disclosure than he would have been had disclosure been timely made." *Id.* Here, the State's failure to timely disclose critical evidence until the date of trial deprived Appellant of his right to a fair trial and there is ample evidence supporting this finding by the Magistrate Court. *See Henderson*, 347 S.C. at 457, 556 S.E.2d at 692; S.C. Code Ann. § 18-3-70.

Accordingly, the Circuit Court erred in reversing the Magistrate Court's ruling because there is evidence which reasonably supports the Magistrate Court's finding that the State's failure to timely disclose material evidence prior to the scheduled bench trial prejudiced Appellant's right to a fair trial.

CONCLUSION

Based on the foregoing reasons, Appellant Louie Weathers respectfully requests that this Court reverse the Circuit Court's decision to reverse and remand the Magistrate Court's dismissal of Appellant's criminal charges.

Respectfully submitted,


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March 1, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case Nos. 2020-CP-18-00905

The State,

Respondent,

v.

Louie Weathers,

Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Initial Brief of Appellant and Designation of Matter has been served upon **William Blicht, Jr., Esquire**, at the South Carolina Attorney General's Office, PO Box 11549, Columbia, SC 29211, by United States Mail, postage prepaid, on March 1, 2021.



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SUBSCRIBED AND SWORN TO before me
this 1st day of March, 2021.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.

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March 1, 2021

The Honorable Jenny A. Kitchings
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Re: State of South Carolina v. Louie Weathers
INITIAL BRIEF OF APPELLANT
Appellate Case No.: 2020-001524

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SC Court of Appeals

Dear Ms. Kitchings:

I have enclosed the original Initial Brief of Appellant and Designation of Matter, along with a Certificate of Service that I also uploaded in AIS and mailed for filing today in the above-referenced case.

Thank you for your assistance with filing these documents.

[Page 1 of 2]

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INITIAL BRIEF OF APPELLANT

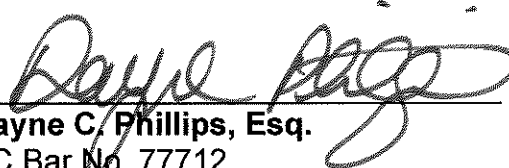
Appellate Case No.: **2020-001524**

March 1, 2021

Page 2 of 2

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



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