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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.

INITIAL REPLY BRIEF OF APPELLANT

Dayne C. Phillips, Esq.
SC Bar No. 77712
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

ARGUMENT IN REPLY 3

 I. The Circuit Court Erred in Conducting a *De Novo* Review of the Record,
 by Failing to Review Only Preserved Errors of Law, and 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. 3

CONCLUSION 7

TABLE OF AUTHORITIES

CASES

Brady v. Maryland, 373 U.S. 83 (1963) 6
Arizona v. Youngblood, 488 U.S. 51 (1988) 6
Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999) 6
State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013) 5
State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) 5
State v. Perez, 334 S.C. 563, 514 S.E.2d 754 (1999) 5
State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (2015) 5

RULES

Rule 5, SCRCrimP 6

ARGUMENT IN REPLY

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

On appeal from Magistrate Court, the Circuit Court Judge 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). The Circuit Court also 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).

In this case, the Circuit Court Judge addressed issues that were not timely or properly raised by Respondent, or ruled on by the Magistrate Court, and Respondent has presented these unpreserved arguments before this Court to affirm the Circuit Court’s

ruling. Specifically, Defense Counsel had previously argued to the Circuit Court Judge, “[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).

During the hearing on the motion to reconsider, Defense Counsel provided the following arguments in support of the prejudice created by the State’s admitted failure to timely disclose material evidence:

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. 4, line 15 – 5, line 7) (emphasis added).

Furthermore, [Appellant] argued in his brief on appeal before the Circuit Court Judge that the “[State’s] knowing failure to comply with these mandates [of Rule 5, SCRCrimP] 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). [Appellant] 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).

The State cannot now on appeal before this Court argue that the “case was not ripe for trial and [Appellant] did not seriously expect to try the case that day.” (Respondent’s Brief, page 11). In support of this untimely and speculative argument, Respondent maintained that the State did not call the case for trial despite that the case was scheduled for a bench trial in Summary Court and Prosecutor control of the docket is unconstitutional. *See generally State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012). Notably, if Defense Counsel had not appeared in Court, the Magistrate Court could have potentially tried this case in his absence (which is a common procedure in Summary Court).

Therefore, Respondent’s arguments were not properly preserved for appellate review before the Circuit Court and are not properly before this Court. *See State v. Brown*, 402 S.C. 119, 740 S.E.2d 493, n. 2 (2013) (finding “[t]here are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the Appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity”) (citation omitted); *see generally State v. Perez*, 334 S.C. 563, 565–66, 514 S.E.2d 754, 755 (1999) (finding issues not raised to and ruled upon in the trial court will not be considered on appeal).

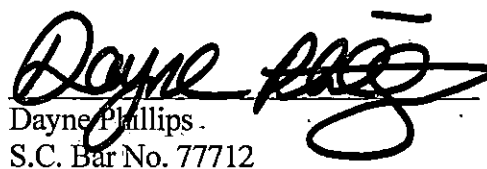
The Respondent’s reliance on *State v. Reaves*, 414 S.C. 118, 777 S.E.2d 213 (2015) is misplaced because the facts and arguments presented in this case are distinct from that opinion. Specifically, the *Reaves* Court addressed whether the evidence lost by police in the investigation of that case deprived the defendant of a fair trial and focused on whether

the defendant could prove the State acted in bad faith. Rule 5 of the South Carolina Criminal Rules of Procedure does not follow the same legal framework as addressed in the *Reaves* opinion and is inapplicable to the analysis set forth in *Arizona v. Youngblood*, 488 U.S. 51 (1988) (holding a defendant must prove bad faith on the part of the police for the destruction of potentially useful evidence to constitute a denial of due process). Therefore, Appellant was not required to prove the State acted in bad faith for the Magistrate Court to grant his motion to dismiss for a Rule 5 violation. See Rule 5, SCRCrimP; see also *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).

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,



Dayne Phillips
S.C. Bar No. 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29072
(803) 807-0234
dayne@pricebenowitz.com

ATTORNEY FOR APPELLANT

August 9, 2021.

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The State,

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CERTIFICATE OF SERVICE.

The undersigned Counsel certifies that a true copy of the Initial Reply Brief of Appellant and Designation of Matter has been served upon **Joshua A. Edwards, Esquire**, at the South Carolina Attorney General's Office, PO Box 11549, Columbia, SC 29211, by United States Mail, postage prepaid, on August 9, 2021.



Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 9th day of August, 2021.

Courtney Powers (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

PRICE BENOWITZ LLP

DAVID BENOWITZ
ADMITTED DC, MD & VA

MARK FOSTER
ADMITTED SC

CHAD SHELTON
ADMITTED SC

KERRI CASTELLINI
ADMITTED DC & MD

KUSH ARORA
ADMITTED MD & DC

JOHN YANNONE
ADMITTED MD & DC

SHAWN SUKUMAR
ADMITTED DC

TAMMY BEGUN
ADMITTED MD

TONY MUNTER
ADMITTED DC & MA

*JESSE STEIN
ADMITTED DC, MD, VA & NY

FARRAL HABER
ADMITTED FL, VA & DC

ARREN WALDREP
ADMITTED DC, MD & SC

MATTHEW WILSON
ADMITTED MD & DC

BRIAN SNYDER
ADMITTED DC & VA

RAMMY BARBARI
ADMITTED DC & VA

JEFFREY SOLOF
ADMITTED MD

BRANDON NORTINGTON
ADMITTED DC & MD

SARAH CULLUM
ADMITTED DC

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 272-4503
DIRECT: (803) 807-0234
FAX: (803) 380-8035

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SC Court of Appeals

SETH PRICE
ADMITTED DC & NY

DAYNE PHILLIPS
ADMITTED SC

KARIN RILEY PORTER
ADMITTED VA

*GLENN E. IVEY
ADMITTED DC & MD

STEVEN L. DUCKETT, JR.
ADMITTED VA

JOEL NIED
ADMITTED VA, PA & GA

SETH OKIN
ADMITTED MD

OLEG FASTOVSKY
ADMITTED MD

MITCHELL GREENBERG
ADMITTED MD & DC

MARY NERINO
ADMITTED VA

PATRICK WOOLLEY
ADMITTED VA

JASON MOORE
ADMITTED VA

*MICHAEL HARTLEY
ADMITTED VA

ANDREW LINDSEY
ADMITTED VA

NICHOLAS STAMATIS
ADMITTED MD, DC & VA

DAMIEN SMITH
ADMITTED VA

ERICK PERLA
ADMITTED MD

JORDAN NYE
ADMITTED DC & VA

*SHAHROO YAZDANI
ADMITTED MD

*OF COUNSEL

110 NORTH WASHINGTON STREET, SUITE 303
ROCKVILLE MD 20850

10505 JUDICIAL DRIVE, SUITE 101
FAIRFAX, VA 22030

August 9, 2021

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Louie Weathers
INITIAL REPLY BRIEF OF APPELLANT
Appellate Case No.: 2020-001524

Dear Ms. Kitchings:

I have enclosed the original Initial Reply Brief of Appellant along with a Certificate of Service that I also emailed 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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WWW.PRICEBENOWITZ.COM

State of South Carolina v. Louie Weathers

INITIAL REPLY BRIEF OF APPELLANT

Appellate Case No.: 2020-001524

August 9, 2021

Page 2 of 2

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

Sincerely,



Dayne C. Phillips, Esq.

SC Bar No. 77712

Price Benowitz LLP

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

cc: **Louie Weathers**
Joshua Edwards, Esq.

Dayne Phillips, Attorney at Law
1614 Taylor Street, Suite D.
Columbia, SC 29201

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The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

