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May 20 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Roger Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SANTONIO T. WILLIAMS,

APPELLANT.

Appellate Case No. 2017-001950

PETITION FOR REHEARING

On May 5, 2021, this Court affirmed the conviction and order denying the motion for rehearing. Appellant hereby requests that this court rehear and reconsider its opinion in this case.

ARGUMENT

I. The trial court erred in allowing the State to introduce a recording of Appellant's jail call during through a rebuttal witness.

This Court found that “[b]ecause the audio recording was not necessary or relevant to the State’s case-in-chief and was ‘arguably contradictory’ to Calhoun’s testimony... the trial court did not abuse its discretion by admitting the audio recording into evidence during the State’s reply.” Applicant respectfully submits that this court’s ruling is inapposite to South Carolina law. *See McGaha v. Mosley*, 283 S.C. 268, 277, 322 S.E.2d 461, 466 (Ct. App. 1984) (“Rebuttal testimony must be in response to an issue raised for the first time during the defendant’s case in chief.”).

During their case in chief, the State directly asked Demorris Harris if he had shot the gun. R.

244, ll. 9-12. Clearly this matter was first raised in the State's case-in-chief. *State v. Huckabee*, 388 S.C. 232, 242, 694 S.E.2d 781, 786 (Ct. App. 2010). ("Reply testimony should be limited to rebuttal of matters raised by the defense, rather than to complete the plaintiff's case-in-chief.").

Appellant respectfully request that this court rehear and reconsider its ruling concerning this matter.

II. The trial court err in failing to grant a new trial, when the State failed to disclose that a jailhouse snitch requested a deal prior to testifying at trial.

This Court found that "Because the State presented 'ample evidence' of Williams's guilt at trial, we hold the trial court did not abuse its discretion by finding that Williams failed to show that the witness's testimony was 'material' under Brady." It appears that the Court was quoting language from *Durant*. *State v. Durant*, 430 S.C. 98, 110, 844 S.E.2d 49, 55 (2020) (Finding no *Brady* violation and no abuse of discretion when there was "ample evidence supporting its verdict."). Despite the citation to recent South Carolina Supreme Court Authority on *Brady* violations, Appellant respectfully submits that this Court's ruling is in error.

While the decision to grant or deny a motion for a new trial is governed by an abuse of discretion standard, "[a]n abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." *See State v. Garris*, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011). Additionally, "[i]t is an abuse of discretion for the [trial court] to commit a legal error -- such as improperly determining whether there was a Brady violation -- and that underlying legal determination is reviewed de novo." *See United States v. Wilson*, 624 F.3d 640, 660 n.24 (4th Cir. 2010).

Evidence which impeaches the State's primary witnesses is material under *Brady*. And the failure to disclose that evidence in this case undermines the confidence the conviction of Appellant. *See Kyles v. Whitley*, 514 U.S. 419, 434, 115 S. Ct. 1555, 1566 (1995) ("The question is not whether the defendant would more likely than not have received a different verdict with

the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A ‘reasonable probability’ of a different result is accordingly shown when the government's evidentiary suppression ‘undermines confidence in the outcome of the trial.’”).

Therefore, Appellant respectfully submits that this Court rehear and reconsider its ruling in this case.

CONCLUSION

Based upon the foregoing, and the arguments previously raised in briefing, Appellant respectfully requests that this Court rehear and reconsider this case.

May 20, 2021

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Certificate of Service

I certify that on the date below I served the Petition for Rehearing on the State of
South Carolina.

May 20, 2021

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