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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

Appellate Case No. 2020001524

Case No. 2020-CP-18-00905

The State,

Respondent,

v.

Louie Weathers,

Appellant.

FINAL 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

Arizona v. Youngblood, 488 U.S. 51 (1988)..... 6
Brady v. Maryland, 373 U.S. 83 (1963) 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. 105, 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. 108, 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. 100, lines 15-20). Defense Counsel also emphasized that Trooper Davis agreed on the trial date and never moved for a continuance. (R. 100, line 20 – 6, line 8; 103, 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.

(R. 26, 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. 93). [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. 93-94).

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).

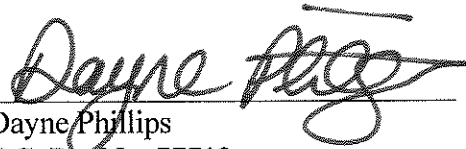
The Respondent’s reliance on *State v. Reaves*, 414 S.C. 118, 777 S.E.2d 213 (2015) is misplaced because the facts and arguments presented in this case are distinct from that opinion. Specifically, the *Reaves* Court addressed whether the evidence lost by police in the investigation of that case deprived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

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CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.



Dayne C. Phillips, Esq.

SC Bar No. 77712

Price Benowitz LLP

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Columbia, SC 29201

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