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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ANDRE WALCOTT,

APPELLANT

APPELLATE CASE NO. 2021-000738

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for continuance where Appellant had never been given the over 5,000 files of discovery to review and therefore could not proceed *pro se* when he wanted to relieve trial counsel as he was never afforded an opportunity to evaluate the evidentiary value of the discovery?

STATEMENT OF THE CASE

During the May 2021 term of the Aiken County grand jury, Appellant Michael Walcott was indicted for two counts of identity fraud to avoid detection of law enforcement. R. 185. Appellant proceeded to trial on June 21, 2021, before the Honorable Clifton Newman and a jury. R. 1. Appellant was represented by Barry Thompson. The state was represented by Samuel Grimes, Jr., and Brandy Sanderlin. R. 1.

After a two-day trial, the jury found Appellant guilty as charged. R. 162. Appellant was sentenced to ten years imprisonment on one count of identity fraud and five years imprisonment on the second count of identity fraud, sentences to be served consecutively. R. 181-182. This appeal follows.

STANDARD OF REVIEW

“The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.” State v. Geer, 391 S.C. 179, 189, 705 S.E.2d 441, 447 (Ct. App. 2010) (quoting State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005)). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” Id. (quoting State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006) (“An abuse of discretion occurs when the trial court's ruling is based on an error of law.”). Even if there was no evidentiary support, “[i]n order for an error to warrant reversal, the error must result in prejudice to the appellant.” Geer, 391 S.C. at 190, 705 S.E.2d at 447 (quoting State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005)); see also State v. Wyatt, 317 S.C. 370, 372–73, 453 S.E.2d 890, 891–92 (1995) (stating that error without prejudice does not warrant reversal).

ARGUMENT

The trial court erred in denying Appellant's motion for continuance where Appellant had never been given the over 5,000 files of discovery to review and therefore could not proceed pro se when he wanted to relieve trial counsel as he was never afforded an opportunity to evaluate the evidentiary value of the discovery.

Relevant Facts

Barry Thompson was appointed to represent Appellant during the May 2021 term of General Sessions court in Aiken County. R. 6, ll. 16-17. On June 8, 2021, the Aiken County Clerk of Court received a letter from Appellant requesting that Counsel Thompson be relieved, and another attorney be appointed to represent him. A member of the Clerk's office forwarded a copy of the letter to both the Solicitor and Counsel Thompson. R. 184; R. 5, ll. 14-18. On June 21, 2021, the case was called to trial. R. 1. Prior to jury selection Counsel Thompson informed the court that Appellant had some pre-trial motions that needed to be heard. R. 4, ll. 17-22.

Appellant initially moved to relieve Counsel Thompson. R. 5, ll. 13-18. The basis of the motion to relieve counsel was two-fold: 1) that Counsel Thompson had a personal relationship with Appellant's former lawyer in the case, James Snell, and had discussed the case with Mr. Snell without Appellant's permission, and 2) that Counsel Thompson had not reviewed the over 5,000 files provided in the discovery with Appellant or provided Appellant with a copy of the files. R. 7, ll. 5-19; R. 13, l. 20-R. 14, l. 1; R. 15, l. 9-R. 16, l. 8; R. 19, l. 23-R. 20, l. 11.

Counsel Thompson stated that he had attended law school with Mr. Snell and generally liked him, but he did not believe that that was a basis upon which to relieve him from Appellant's case. R. 5, ll. 13-23. He also confirmed that he had spoken with Mr. Snell for "insight" into Appellant's case. R. 7, ll. 2-19. Regarding the discovery, Counsel Thompson

stated that he had been unable to access the discovery¹ in Appellant's case until June 15, approximately a week before trial. Counsel Thompson explained to the court that the discovery contained over 5,000 files. Therefore, instead of requesting a continuance to review the over 5,000 files, he had asked the Solicitor to specify what evidence would be used at trial. The Solicitor indicated that only eight items would be used during Appellant's trial. Subsequently, Counsel Thompson only reviewed only those eight items with Appellant and never reviewed the rest of the discovery materials. R. 16, l. 10-R. 18, l. 5.

Counsel Thompson further informed the court that the Solicitor had represented to him that there were no exculpatory items in the voluminous discovery files. The Solicitor interjected that he did not find that there was anything exculpatory but could not speak as to whether there was anything material or exculpatory to any defense Appellant might raise. R. 23, l. 13-R. 24, l. 4.

During the motion to relieve counsel, the court was also informed that Appellant was seeking a continuance based in part on his medical problems. R. 12, ll. 20-24. Appellant gave a lengthy explanation of his current medical problems and provided the court with updated medical records.² R. 8, l. 21-R. 12, l. 17. Counsel Thompson stated that he did not join in the motion for continuance based on Appellant's medical conditions, as he believed him to be "lucid and coherent" and had not had any trouble communicating with Appellant. R. 12, l. 20-R. 13, l. 6.

¹ The State had uploaded the discovery to a cloud server and Counsel Thompson had technical difficulties in downloading the expansive discovery materials. R. 16, ll. 1-20.

² These records were not made an exhibit but were reviewed by the trial judge during the pre-trial motions. R. 12, l. 3-12; R. 25, ll. 14-16.

Prior to ruling on the pre-trial motions, the court asked Appellant for his final argument. Appellant argued that he still had not seen the over 5,000 files provided in discovery, and that the few items he was provided with did not have any context which impeded his ability to present a defense to the charges. R. 24, ll. 5-13. The court denied Appellant's motion to relieve counsel and motion for a continuance. In denying the motions, the court informed Appellant he could proceed with Counsel Thompson or proceed *pro se*. Appellant responded that if he were to proceed *pro se* he would still need to review the discovery, as was his right, but the court stated it was moving forward with the trial that day. R. 24, l. 14-R. 25, l. 17.

Discussion

Counsel Thompson readily admitted that instead of requesting a continuance to review all the files provided during discovery, he simply relied on the Solicitor's contention that out of the 5,000 plus files there were only eight relevant items and that there was nothing of exculpatory value. Because of this, Appellant sought to relieve Counsel Thompson and continue the case so that he could obtain another lawyer to review the discovery or to review the discovery himself. When the court denied those requests, it abused its discretion and Appellant was unable to determine what evidentiary value was contained within the voluminous discovery.

“The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion.” State v. Wrapp, 421 S.C. 531, 535, 808 S.E.2d 821, 823 (Ct. App. 2017). “Where there is no showing that any other evidence on behalf of the [defendant] could have been produced, or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial, the denial of a motion for continuance is not an abuse of discretion.” State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51–52 (1996).

In Williams, *supra*, the defendant moved at the start of trial to relieve his retained counsel and for a continuance because he was dissatisfied with his attorney. Id. at 458-59, 469 S.E.2d at 51. The court gave the defendant until the following morning to find new counsel or proceed *pro se*. Id. Although the defendant advised the court that he had hired new counsel, no attorney contacted the court or appeared on his behalf. Id. As a result, the court denied the motion for continuance and the trial proceeded with the defendant's original retained lawyer. On appeal the defendant argued the court abused its discretion by not granting the continuance. Id. at 459, 469 S.E.2d at 51. Our Supreme Court found that there was not an abuse of discretion because the defendant had waited until the day of trial to move to relieve counsel whom he had retained nearly fifteen months prior. Further, the defendant did not cite to any evidence that had not been produced, and the record did not reveal any other point which could have been raised on his behalf had he been granted more time to prepare for trial. Id. at 459, 469 S.E.2d 52.

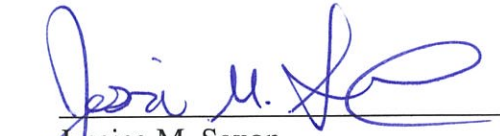
In State v. Turner, 229 S.C. 459, 462, 385 S.E.2d 832, 834 (1989), the State informed defense counsel that certain biological samples had been lost or misplaced. The samples, which had been in the custody of SLED, were brought to court on the eve of trial and ten minutes prior to the pre-trial hearing defense counsel was informed of their existence. The samples had not been tested, and the defendant moved for a continuance to have the evidence tested or to wait for SLED to perform an analysis on the samples. Id. The court ruled the evidence would not be admissible and therefore denied the motion for continuance. Id. Our Supreme Court held that the court erred in failing to consider the potential exculpatory value of the evidence and that a continuance was warranted "so that the defendant could adequately ascertain the samples' full evidentiary value." Id. at 463, 385 S.E.2d at 834.

Much like the defendant in Turner, *supra*, the court in Appellant's case failed to consider the potential evidentiary value contained within the over 5,000 files the State produced as discovery. Counsel Thompson recognized that he could not review the discovery in time for trial, but instead of requesting a continuance, he relied on assertions by the Solicitor as to the discovery files contents and relevance. This left Appellant to make the motion for a continuance so that he could determine the evidentiary value of the files. Further, unlike the defendant in Williams, *supra*, Appellant did not wait until the day of trial to move to relieve counsel but filed a motion shortly after Counsel Thompson was appointed which was approximately a month prior to trial.

Admittedly, Appellant cannot identify specific pieces of evidence that were not produce or specific points that could have been raised because he was never provided with the discovery. However, the sheer number of files that the State complied in the case indicated that there was more evidence that could have impacted Appellant's defense to the charges. Considering that Counsel Thompson admitted he had not reviewed all of the discovery, because he had only received it a week before trial, it was necessary to continue the case to allow Appellant the time to review the materials and ascertain their evidentiary value. However, instead of granting Appellant a continuance the court presented him with a Hobson's choice: either proceed to trial with counsel who had admittedly not reviewed the discovery or proceed *pro se* without an opportunity to review the discovery. The court's failure to grant a continuance in this matter was an abuse of discretion.

CONCLUSION

By reason of the foregoing argument, Appellant respectfully request that this Court reverse his convictions and sentences and remand this case to the Aiken County Court of General Sessions for a new trial.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of April.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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APPELLANT

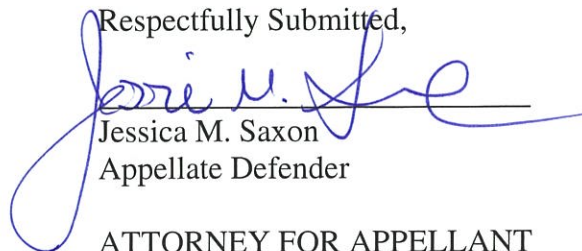
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Andre Walcott states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on June 22, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Michael Andre Walcott.

Respectfully Submitted,



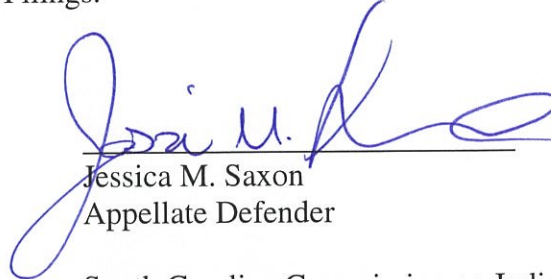
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of April, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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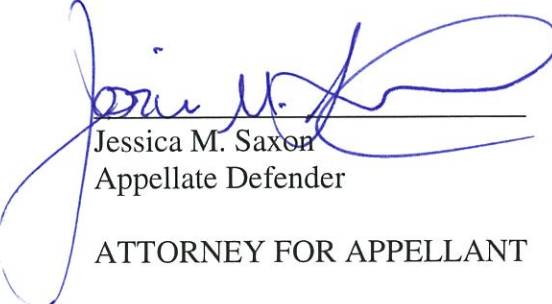
MICHAEL ANDRE WALCOTT,

APPELLANT

APPELLATE CASE NO. 2021-000738

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case have been served upon William M. Blich, Jr., Esquire at the primary e-mail address listed in the Attorney Information System (AIS); and on Michael Andre Walcott, #385558, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 22nd day of March, 2022.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT