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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002632
(2016-CP-46-3602)

State of South Carolina.....Respondent,

v.

Travis Hines.....Petitioner.

**REPLY TO RESPONDENT’S MOTION TO SERVE AND FILE RETURN TO MOTION
REGARDING THE SUPPLEMENTAL APPENDIX AND TRANSPORT OF THE VIDEO
AND RESPONSE TO MOTION TO STRIKE THE
PETITION FOR WRIT OF CERTIORARI**

Undersigned counsel offers this brief reply to Respondent’s Return regarding the supplemental appendix and motion to transport the video to the Court, and a Response to the Motion to Strike the Petition for a Writ of Certiorari.

I. Transporting the Video

Counsel respectfully submits this Court should transport the video to the Court for review by counsel and this Court. Respondent complains the video was not before the lower court. This is true, and it is because the Solicitor’s Office has refused to allow counsel for the Petitioner to review the videotape. As a consequence of the Solicitor’s policy, no court or counsel have been able to fully assess the merits of Petitioner’s case. Unless this Court intervenes, no counsel for Travis Hines will have had an opportunity to assess the State’s evidence against him and raise whatever

legal issues may exist on his behalf. This, despite a state statute that unequivocally provides that he is entitled to review the evidence against him. There is no authority that provides the Solicitor's Office is entitled to keep this evidence from either Hines or his counsel and this Court should grant Petitioner's motion to transport the video for review so that at least one lawyer for the Petitioner, and the Court, will have an opportunity to fully assess the evidence against him.

II. The Supplemental Appendix

Counsel respectfully submits allowing a supplemental appendix in his matter is appropriate. Petitioner, in addition to challenging the PCR court's order below, is also requesting this Court assess the continued viability of the *Hyman* opinion and reverse it. To that end, this Court should consider that the Solicitor's policy of not allowing defendants access to portions of the evidence impedes counsel's ability to carefully assess the State's evidence against a client resulting in guilty pleas that are constitutionally infirm. The two pages of documents requested to be part of the record illustrate there were material inconsistencies on the part of law enforcement's investigation of the case that needed to be assessed and investigated by trial counsel. Petitioner's first lawyer, Chris Wellborn, was not provided access to that material (other than still shots of part of the evidence the Solicitor's Office deemed "relevant") and, in the end, Petitioner was denied his right to an appointed counsel. Petitioner pleaded guilty to these drug charges, received a 14-year sentence (after being threatened with a life sentence), without either his or his lawyer's viewing the evidence against him. Petitioner submits these additional documents illustrate just how damaging the Solicitor's current policy is to the constitutional guarantee of effective assistance of counsel and provides an additional basis for this Court to take up Petitioner's case and end the Solicitor office's unilateral and non-reviewable policy of denying defendants access to their discovery as guaranteed by state statute.

CONCLUSION

To be clear—the Solicitor’s Office in York County is engaged in conduct that violates our state statute regarding discovery in criminal matters. If solicitors are concerned about the safety of confidential informants in a particular case, they have a remedy that is expressly provided for by the statute. Following that practice would create an appellate record which other courts could review which is currently not happening. Instead, the Solicitor’s office acts on its own without any oversight, and without any limiting principle.¹ Frankly, the Solicitor’s policy looks less like a policy to protect CI’s than as a tool used to coerce guilty pleas. Not only is the Solicitor’s office denying access to discovery in criminal cases, it is additionally predicating plea deals on defendants’ willingness to not put up too much of a fuss about it. In this way, it is avoiding appellate scrutiny of the practice. Currently there is absolutely no judicial oversight of this practice because, by pleading guilty, defendants are hamstrung in their ability to bring the practice to light. This Court should overrule *Hyman* which has emboldened the Solicitor’s Office in not only denying defendants access to their discovery but also predicating plea deals on defendants’ acquiescence in their improper practices, and grant Petitioner relief.

Respectfully submitted,

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¹ What’s to stop the Solicitor’s office from denying access to witness statements in other contexts? Witnesses to a murder, for example, surely share some of the safety concerns as drug informants, and the Solicitor’s office does not meaningfully draw a distinction between one class of witnesses and another.