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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARVIX L. WRIGHT,

APPELLANT

APPELLATE CASE NO. 2021-001537

INITIAL REPLY BRIEF OF APPELLANT

SUSAN B. HACKETT
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ARGUMENT IN REPLY

I. The circuit court judge abused his discretion by denying Appellant's request for immunity under the Protection of Persons and Property Act where the circuit court judge ruled Appellant's "claim of self-defense present[ed] a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution."

Respondent argued the circuit court's abdication of his duty to act as fact finder is not preserved for appellate review because Appellant "never objected to the sufficiency of the trial court's ruling and did not request that it make any additional findings." BOR at 7. Appellant respectfully submits the error is preserved for review.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citing Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997)). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." Id.

The rationale of issue preservation is to prevent "a party from keeping an ace card up his sleeve – intentionally or by chance – in hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." I'On, L.L.C., 338 S.C. at 422, 526 S.E.2d at 724. "[R]equiring attorneys to continue to object when a ruling is clearly final would not serve the purpose of our rules of preservation; rather, it would merely foster a game of 'gotcha,'

where form is elevated over substance." State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 561 (2021). "Preservation rules are intended to ensure that appellate courts review considered decisions of our trial courts and that issues are not being raised for the first time on appeal." Id. "Their purpose is not to sabotage attorneys' efforts to bring issues before the appellate courts." Id.

Generally, the rules of issue preservation are strictly enforced. However, the appellate courts have carved out certain limited exceptions. First, the "lack of subject matter jurisdiction may be raised at anytime, including for the first time on appeal." State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005). Another exception is the "doctrine of futility." Id. Our courts have recognized "that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused." Id. A third "exception exists where the interests of minors or incompetents are involved." Id. at 585, 611 S.E.2d at 282. The final exception is where exceptional circumstances require excusal of error preservation. Id. For example, the Supreme Court found exceptional circumstances existed where failure to review the merits of a sentencing error would result in the defendant remaining incarcerated beyond the legal sentence. State v. Johnston, 333 S.C. 459, 463-464, 510 S.E.2d 423, 425 (1999); see also State v. Vick, 384 S.C. 189, 203, 682 S.E.2d 275, 281-282 (Ct. App. 2009) (excusing error preservation where the sentencing for kidnapping was in violation of the statute).

Here, Appellant moved for immunity pursuant to the Protection of Persons and Property Act. At the conclusion of the hearing, the presiding judge did not rule. Instead, immediately prior to the start of trial, the judge announced his ruling on the record stating:

> Last week there was a hearing before the Court for a motion by the defense to dismiss the indictment based upon his assertion that he's entitled to immunity pursuant to 16-11-440(C) and perhaps 16-11-450(A).
>
> In any event, the defendant's motion to dismiss the indictment based upon the immunity statute is denied.

> I find he's failed to establish by a preponderance of the evidence all of the necessary elements of the defense of self-defense and therefore would not be entitled to immunity under the Act.
> I have reduced my ruling to a written order which will be filed today.

Tr. 48, ll. 13-24. The order, which was dated December 13, 2021, the first day of Appellant's trial, was filed on December 14, 2021. R. *(order). There was no indication that a copy of the order was provided to defense counsel prior to the on-the-record announcement such that defense counsel could have posed an objection to it at that time. Further, there was no indication that a copy of the order was provided to defense counsel at any time such that defense counsel could have posed an objection at any time.

Not only was there no time at which defense counsel could have proposed the hyper-technical objection requested by the state in its brief, there was no need to do so because defense counsel did all that was necessary to raise the issue squarely before the judge. Defense counsel moved for Appellant to be found immune from prosecution under the statute, and the judge denied the request. This is all that is required to preserve the issue presented – whether the trial judge erred as a matter of law by abdicating his duty as factfinder by refusing to resolve conflicts in the evidence presented. Furthermore, the judge is presumed to know the law. See Harris v. Rivera, 454 U.S. 339, 346-347 (1981) (discussing that "well-established presumption" that judges adhered to basic rules of procedure when acting as factfinder).

II. In the alternative, if this Court determines the trial judge ruled on the merits of Appellant's request for immunity such that the ruling may be reviewed by this Court, the trial judge erred by failing to find Appellant was immune from prosecution under the Act where Appellant proved by a preponderance of the evidence that he acted in self-defense.

Additionally, Respondent argued that if this Court determines the judge's paltry order was sufficient for appellate review, then evidence supports the denial of immunity. BOR at 13. To support this contention, Respondent grasps at various parts of the order in an unsuccessful attempt to cobble together findings of fact and conclusions of law. For example, Respondent argued that it was "apparent" the judge found Appellant failed to show he killed the deceased out of necessity. BOR at 14. Thereafter, Respondent searches for parts of the order allegedly to support this finding of fact that appears nowhere in the order. Later, Respondent claimed there was an "obvious implication" from the order that the judge believed Appellant planted a knife. BOR at 14. However, the summary of the testimony recounted by Respondent did not include any such allegation, the judge's actual order did not include any such finding, and the implication claimed by Respondent is anything but "obvious."

CONCLUSION

Appellant respectfully requests this Court vacate the circuit court's order and remand for a new order regarding Issue I. In the alternative, regarding Issue II, Appellant respectfully requests this Court hold he is entitled to immunity from prosecution.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2023.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the initial reply brief of appellant in the above-referenced case have been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 13th day of January, 2023.

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ATTORNEY FOR APPELLANT

From: Stock, Chris
To: SC - EDWARDS JOSHUA; Leigh Ann Stone
Cc: Hackett, Susan
Subject: Wright, Charvix - Initial Reply Brief of Appellant - 2021-0001537
Date: Friday, January 13, 2023 4:55:00 PM
Attachments: Wright, Charvix - Initial Reply Brief of Appellant - 2021-0001537.pdf
Wright, Charvix - Initial Reply Brief of Appellant - 2021-0001537 - AG Cover Letter.pdf

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Mr. Blitch,

Please find attached for service the Initial Reply Brief of Appellant for Charvix Wright appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
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