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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2022-001218

Case No. 2018-CP-40-4835

Joseph P. Sellaro,.....Respondent,

v.

The South Carolina Department of Social Services and the Richland County
Sheriff's Department,Defendants,

Of which the South Carolina Department of Social Services is theAppellant.

SUPPLEMENTAL RECORD ON APPEAL
(pp. 739-744)

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SUPPLEMENTAL RECORD ON APPEAL

Trial Transcript, May 16, 2022 through May 19, 2022

Discussion about jury charges.....739-744

1 THE COURT: Right.

2 MR. GARFIELD: It's an -- there's some in -- there's
3 interesting discussions on that.

4 THE COURT: Like your, your case was the defamation
5 case.

6 MR. SUMMERS: Yes, sir.

7 THE COURT: It was not that one. I have one against
8 the USC police department where I got a request to charge on
9 the immunities and I was like oh, I'm pretty sure I've never
10 done that before.

11 MR. GARFIELD: And I got a phonecall on that as well.
12 It's just two different ways to approach that.

13 THE COURT: Right.

14 MR. GARFIELD: I know that they're (indiscernible)
15 during that charge --

16 THE COURT: Right.

17 MR. GARFIELD: -- because it's a matter of law.

18 THE COURT: It's a matter---

19 MR. GARFIELD: If you don't---

20 THE COURT: ---of law. So I think, from a record
21 standpoint, that that issue is preserved even if you don't
22 request a charge on it. So --.

23 MR. GARFIELD: That's my view. I would like to look at
24 one more thing this evening if you don't mind.

25 THE COURT: Okay.

1 MR. GARFIELD: I -- my, my tendency would be the same
2 to not charge them --

3 THE COURT: Okay.

4 MR. GARFIELD: -- because I know that they would still
5 be preserved. You've -- Your Honor's done a great job just
6 helping us -- all of counsel preserving the record,
7 protecting the record.

8 THE COURT: And then I -- I've been tweaking some of
9 the damages hearings.

10 MR. BREHMER: Sure.

11 THE COURT: There are medical bills in the record.
12 So -- but loss of enjoyment of life, pain and suffering, and
13 I -- those kind of things. All those basics. But no,
14 they're no -- I, I don't hear any like lost wages.

15 MR. BREHMER: No. No. There's not.

16 THE COURT: Future damages---

17 MR. BREHMER: Yeah.

18 THE COURT: ---or, you know, preexisting. There's not
19 a preexisting---

20 MR. BREHMER: Sure.

21 THE COURT: ---condition.

22 MR. BREHMER: No.

23 THE COURT: There's not future damages or future meds
24 or so we kind of --

25 MR. BREHMER: Sure.

1 catch.

2 MR. SUMMERS: Thank you, sir.

3 THE COURT: Yeah, we put that in, cause nine times out
4 of the ten, it's a car wreck and so --.

5 MR. SUMMERS: Yes, sir, I understand.

6 THE COURT: That's the civil defense attorney's
7 favorite car wreck paragraph. Weinstein versus Armstrong or
8 something like that.

9 MR. SUMMERS: I, I do know it, yes, sir.

10 THE COURT: All right. There you go. Good catch on
11 that. Very good.

12 MR. SUMMERS: Thank you.

13 THE COURT: Okay. Okay. All right. And then let's --
14 last or some time yesterday the sheriff submitted the
15 immunities.

16 MR. GARFIELD: Yes, Your Honor.

17 THE COURT: I think you're switching positions on that
18 now.

19 MR. GARFIELD: I wasn't really switching. I was sort
20 of on the fence. I was kind of on one---

21 THE COURT: You were confident yesterday.

22 MR. GARFIELD: I was leaning.

23 THE COURT: You were confident yesterday.

24 MR. GARFIELD: I was hesitantly con -- confident.

25 THE COURT: You were confident.

1 MR. GARFIELD: I was pretty confident?

2 THE COURT: Yeah, you were confident.

3 MR. GARFIELD: I'd, I'd like, as an abundance of
4 whatever kind of caution or precaution, we would
5 respectfully ask that Number 14 be, be included.

6 THE COURT: Okay.

7 MR. GARFIELD: I've -- like I said, there were two
8 different philosophies on it. I had to talk to some
9 philosophers.

10 THE COURT: All right. Mr. Summers.

11 MR. SUMMERS: I didn't talk to any philosophers. But I
12 contemplated philosophically and I would agree with you --
13 with the proposed inclusion of that language.

14 THE COURT: All right. Mr. Brehmer.

15 MR. BREHMER: I would agree with the consensus of
16 yesterday. I thought that those were legal issues for the
17 Court as opposed to issues for a jury.

18 MR. GARFIELD: And, and --.

19 THE COURT: I thought there, there had some case law
20 that came out on the -- there's some case law that came out
21 on the immunity statute under self-defense that said you
22 could not charge the statute. I don't---

23 MR. GARFIELD: You mean like the --?

24 THE COURT: So there---

25 MR. GARFIELD: -- the Castle Doctrine and those kind of

1 to make it a little bit more simple. I explained what the
2 standard is, then how they have to look at the standard, you
3 know, not in looking back but not in, not in hindsight is
4 2020, but as stepping in the shoes of a reasonable officer
5 at the scene on the night in question based upon the
6 information they have. That's the objective standard not
7 the subjective standard.

8 Right?

9 MR. GARFIELD: That's right.

10 THE COURT: Okay.

11 MR. GARFIELD: Could we take a short break before you
12 call the jury back or --?

13 THE COURT: Yeah, I want to hear what you have -- your
14 thoughts on the, the immunities being charged one more time.

15 MR. GARFIELD: Okay.

16 THE COURT: Cause I---

17 MR. GARFIELD: I can't---

18 THE COURT: I think that's the only thing left that
19 I---

20 MR. GARFIELD: Sure. I, I --.

21 THE COURT: ---that I haven't decided.

22 MR. GARFIELD: I understand. I did not find any case
23 law addressing that point. I think the only thing close we
24 found is the, the Clark versus DPS case that really
25 references is to counsel not including certain immunities in

1 the jury charge, whether that's waived on appeal, if it was
2 brought up originally or initially at the DV stage. I, I
3 don't see anything one way or the other. I, I do see -- I
4 do understand that it's in the judicial discretion as it --
5 Clark versus DPS apparently does say it's in the discretion
6 of the Court.

7 THE COURT: Okay. All right. Mr. Summers.

8 MR. SUMMERS: I'm at least familiar with Clark, sir.
9 That is my understanding of it as well.

10 THE COURT: Okay. And Mr. Brehmer.

11 MR. BREHMER: My position's the same.

12 THE COURT: All right. Well, the safest thing to do is
13 to charge it I mean frankly. If I charge it, then -- if I
14 don't charge it, I think it probably creates more of an
15 issue than if I do charge it. But either way it goes, it
16 creates an appealable issue for either side if I charge it
17 or if I don't charge it. So, it's a double edged sword.

18 So -- okay. Okay. All right. All right. Okay. All
19 right. So let's take 10 minutes. Everybody go to the
20 restroom, get your thoughts together. We'll get a copy of
21 this printed out.

22 One thing -- oh, before you do that. I have been
23 sending the charge back a good bit.

24 what is anybody's thoughts on that?

25 we did it last week. Last week we waited until a