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SC Court of Appeals

Transcript

OR

Record

28 pages.

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
ANTHONY D. SUTHERLAND,) 2021-GS-42-4315
DEFENDANT.)

March 15th, 2024

B E F O R E:

THE HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S:

SPENSER SMITH
ASSISTANT SOLICITOR
Attorney for the State

ANTHONY D. SUTHERLAND
Pro Se

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JUL 01 2024

SC Court of Appeals

Pamela E. Green
Circuit Court Reporter

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I N D E X

(WHEREUPON, there were no exhibits marked or
testimony taken during this hearing.)

1 PROCEEDINGS

2
3 THE CLERK: Anthony Sutherland.

4 THE COURT: Okay. Mr. Sutherland, come on up, sir.
5 Good morning.

6 Okay. Mr. Sutherland has some motions.

7 You have the microphone, sir.

8 MR. SUTHERLAND: Okay. Thank you, sir.

9 Your Honor, I just recently got some more documents
10 sent to the Court.

11 The -- it's been some misunderstanding in the Court
12 with the clerks. They've been returning my documents. I
13 got a letter here. They been stamping my documents filed,
14 and then, a few days later, they stamp them erroneously
15 filed and mail them back to me.

16 The controversy is that they think that I'm
17 represented by an attorney and, in reality, I was denied
18 that right by the Court to assistance of counsel. So,
19 I -- I'm trying to get all my documents back into the
20 Court and just recently last night I had, or yesterday
21 afternoon, I added some addendums to these motions.

22 My motion to the Court is to notice the defective
23 indictment and to quash that defective indictment. The
24 indictment has a -- constitutional issues and subsequent
25 jurisdictional issues. The, the indictment, I'm stating

1 that it is fatally flawed and defective.

2 Oh, by the way, Your Honor, I'm here today in special
3 appearance --

4 THE COURT: Yes, sir.

5 MR. SUTHERLAND: -- to, to issue this challenge to
6 the Court.

7 I've been making it known from the beginning, even
8 though I had counsel at one time, even then I was
9 appearing in the Court in propria persona in special
10 appearance. I hired my attorney as, as a counsel to
11 counsel me and answer my questions on the law. I was
12 actually in jail when my sister went and seen Mr. Farr and
13 retained him for me.

14 I'm asking the Court to take notice to the defects in
15 the indictment. The Bill of Indictment did not name a
16 victim against whom the defendant allegedly committed a
17 crime. The omission of a victim's name and failure to
18 identify a victim is a fatal defect in the pleading and
19 this discrepancy alone constitutes grounds to dismiss the
20 charge.

21 I don't know really who certifies the charges against
22 me. I don't know who the proper plaintiff party is. I
23 find these to be an issue of jurisdiction, these
24 discrepancies.

25 I'm alleging that the Bill of Indictment charges no

1 crime. It's a charge but it does not charge a crime.

2 The Bill of Indictment has failed to state the
3 substantial and fundamental facts to satisfy. The problem
4 I'm having is the mere appearance of something the State
5 says that that's a crime and they say that this mock
6 device, just, just the mere possession of it, is a crime.
7 In and of itself, it's not inherently evil.

8 This device was not a causation to anything. There
9 was not causation to any injuries and injuries and a
10 victim is something you have to have if you're gonna
11 allege a crime. This does not enable me to even know what
12 I'm defending against.

13 The State failed to state any injuries in the
14 indictment. The indictment failed to state that the actus
15 reus or the act on the questioned conduct was a causation,
16 that injuries happened, and that the causation was linked
17 to me, and that it was a link to the questioned conduct.

18 So I'm saying that the Bill of Indictment charges no
19 crime or claim that is redressable and there's no remedy
20 that is due to anyone. I've not breached any duty. I
21 didn't owe the State any duty. I don't have, have any
22 notice from the State, any due process notice from the
23 State, that my actions were illegal.

24 I did not set out to purposely and knowingly and
25 willingly and intentionally violate any statute. The Bill

1 of Indictment is legally insufficient. In order for the
2 Bill of Indictment to be legally sufficient, the
3 indictment must contain the elements of the offense
4 charged, fairly inform a defendant of the charge, and
5 enable a defendant to plead double jeopardy as a defense
6 in a future prosecution for the same offense.

7 If the indictment does not contain every essential
8 element of the offense, it is invalid and a Bill of
9 Particulars can not cure the defect and this is then --
10 the Bill of Indictment ensures that a defendant does not
11 face incarceration except on presentment or indictment of
12 a Grand Jury.

13 When all of the essential elements are not present to
14 allege a crime, when they're not present in the
15 indictment, it ceases to be an indictment and the Fifth
16 Amendment says that we should not be held to answer not an
17 indictment from the Grand Jury. But when the indictment
18 is fatally flawed, it ceases to be an indictment and I
19 have a right not to be tried under such circum --
20 circumstances.

21 The bill of -- a Bill of Particulars can not cure the
22 defect. In essence then, the Bill of Indictment ensures
23 that a defendant does not face incarceration except on
24 presentment or indictment of a Grand Jury. Thus, if it is
25 insufficient, a prosecutor can not cure the defects,

1 Darbies (phonetic), United States versus Floresca, 38 F.3d
2 706, Fourth Circuit, (1994).

3 A departure by a Court from those recognized and
4 established requirements of law higher the close apparent
5 adherence to mere form and method of a procedure which has
6 the effect of depriving one of a constitutional right is
7 an excess of jurisdiction. Wuest versus Wuest, 127 P.2d
8 934, 937.

9 I believe the Court to be one of -- I believe it is a
10 public administrative agency, a semi-quasi jurisdictional
11 body, but not functioning as in the sense of a
12 constitutional, jurisdictional body for it brings the
13 charge against me under statute and then it does not
14 allege what the actual offense is. The State fails to
15 state an offense, does not state a real crime, a true
16 crime, as it would be in common law or, or under the
17 language of common law. And I'm alleging it's a public
18 administrative agency operating quasi-judicially and I
19 demur today that I do not consent to such an
20 administration.

21 I reserve my rights to an Article 3 constitutional
22 court system, one of -- that has a fair process and I --
23 and an impartial and opposing opposition, somebody that
24 will adhere to the constitutional standards, and I do not
25 believe that the State today has met the constitutional

1 standards.

2 I'd like to challenge the jurisdiction of the Court
3 and I'd like to speak on matters of standing and ripeness
4 of the case.

5 If you'll excuse me, I'd like to have some water.
6 My, my throat is extremely dry.

7 THE COURT: Yes, sir, help yourself.

8 MR. SUTHERLAND: I'll go now to address the standing,
9 Doctrine of Standing.

10 The State of -- the State of South Carolina has
11 failed to meet the requirements of standing and is without
12 capacity to bring a case based upon the following
13 statements of dispositive fact and law:

14 Standing is the requirement that plaintiffs must have
15 sustained or will sustain direct injury or harm and that
16 harm is redressable. Otherwise, no party has capacity to
17 bring a case. See Lujan versus Defenders of wildlife,
18 9-1424, 504 U.S. 55, (1992).

19 The Supreme Court created a three part test to
20 determine whether a party has standing. The plaintiff
21 must have suffered an injury in fact meaning that the
22 injury is of a legally protected, protected interest which
23 is a concrete and particularized and actual or imminent.
24 There must be a casual connection between the injury and
25 the conduct brought forth before the Court.

1 It must be likely rather than speculative that a
2 favorable decision by the Court will redress the injury.
3 In this case, there is no injury.

4 Courts have constitutional authority to try cases
5 when there's an actual set of facts that demonstrates a
6 party's entitled to relief. When those merits have not
7 been reached, the State has failed to bring a justifiable
8 claim. Therefore, the State itself is an impro --
9 inappropriate party with no matter to redress and nothing
10 to settle. In fact, a misdemeanor, accusatory instrument
11 that fails to state a crime or fails to recite each
12 element of the offense is jurisdictionally defective and a
13 guilty plea does not waive the right to challenge the
14 accusatory instrument on this ground for the first time on
15 direct appeal. See *People versus Case*, 42 New York 2d 98,
16 100, (1977); *Dreyden*, 15 N.Y.3d at 103.

17 The case is not ripe. No party seeks relief. No
18 interests have been identified. No party's been
19 identified in the indictment. No controversy, no
20 conflict, no dispute presently exists that it might be
21 redressed and settled.

22 The United States Supreme Court's two part fitness
23 and hardship test, when applied to this case, one can
24 easily ascertain that the State's case is not ripe for
25 controversy, that the case is not sufficiently developed

1 to allow a Court to make an accurate determination of
2 facts, and there can be no aggregate determination of
3 facts when the essential elements necessary to allege a
4 crime, a claim, an offense are nonexistent. Those
5 necessary facts were not alleged in any of the charging
6 instruments.

7 The complaint, warrant, and indictment. The State
8 did not identify any victims nor any party in the
9 indictment with any adverse legal interest that are
10 clearly identifiable. The -- again, a victim must be
11 identified and their legal interests must be identified.

12 No claim of injuries in the indictment. No claim of
13 what set injuries or, or what, what thing was in motion,
14 what action was in motion that caused injuries. None of
15 that is in the indictment.

16 On 12/20/2023 at the bond hearing to amend the bond
17 conditions, prosecution acknowledged my claim that there
18 is no victim in this case. The prosecutor, Mr. Spenser
19 Smith, on the record stated Your Honor, I agree with him
20 that there is no victim in this case.

21 The State lacks a real controversy. When you
22 consider his acknowledgment, and what I've been saying all
23 along, the State lacks a real controversy. That is a
24 requirement. That's a constitutional requirement. They
25 must have a real controversy for a Court to adjudicate.

1 The State lacks a good, concrete, argumentative
2 scheme based on these facts. The States (sic) lacks a
3 good legal framework to build a valid legal theory.

4 The State has not reached the merits and this case is
5 not ripe. See *Manzara versus State*, 343 S.W.3d 656, 659,
6 *Missouri* (2011), and *Swetch versus Dixon*, 408 S.W.3d 59,
7 774 (MO) 2-1 -- (2013).

8 Legal fact. Court cases are limited by the
9 requirement of Article 3 of the United States
10 Constitution. Courts should only adjudicate actual
11 disputes between real adverse parties who have identified
12 real legal interests. See *North Carolina versus Rice*, 404
13 U.S. 244, 246 (1971).

14 This case represents obviously jurisdictional issues.
15 That's why I challenged the subject matter jurisdiction of
16 the case.

17 Facts and law, the Fifth Amendment, and the
18 indictment. The Fifth Amendment applies to the states
19 under the Fourteenth Amendment and through the
20 Incorporation Doctrine. And the Fifth Amendment provides
21 the only way a man can be charged with a crime against the
22 government, and it appears that the government is bringing
23 the charge. It appears that the government is the
24 plaintiff. It appears that the government is the one
25 certifying the charges.

1 It appears that the plaintiff is the State and the
2 only way that a living soul can be charged with a crime
3 against the government is by the requirements of the Fifth
4 Amendment to the United States Constitution.

5 The Fifth Amendment applies to the guilty and it also
6 applies to the innocent and neither may be held to answer
7 if the indictment is constitutionally deficient. And the
8 Fifth Amendment contains a right not to be tried
9 independent of any prejudice in the merits trial.

10 In its decision in *Midland Asphalt versus United*
11 *States*, 489 U.S. 794, (1989), where -- it states where an
12 indictment contains a fatal flaw or defect, it ceases to
13 be an indictment. A defect so fundamental that it causes
14 the indictment no longer to be an indictment gives rise to
15 the constitutional right not to be tried. ID 802.
16 Emphasis applied.

17 A well known legal maximum. where there is a right,
18 there is a remedy, which postulates that where law has
19 established a right, there should be a corresponding
20 remedy for its breach. Remedies are institutional
21 guarantees that legal rights will be observed and enforced
22 to ensure credibility in the legal system.

23 It's unfortunate sometimes though, rather than look
24 at my constitutional rights and my civilly liberties that
25 are being abridged, sometimes the State will look at a

1 case and weigh its own interests above my interests,
2 whatever those interests may be, cause frankly I can't
3 identify what those interests are because I don't know if
4 the State's protecting me from myself because obviously
5 there is no injuries in this case. And I thought Courts
6 took cases when there was a victim, somebody that was
7 injured, when there was an actual controversy, something
8 that needed to be remedied.

9 In this case, there's no -- there's, there's not a
10 soul that has a case against me. There's no man, no
11 woman, no child. Nobody's come to me with a claim that I
12 might settle with them and that's the real issue before
13 this Court today.

14 There, there is no matter to settle. There is no
15 threat to nobody. Just my behavior, my private behavior
16 in my own home, is being questioned. My own private
17 thoughts that are being protected under the United States
18 Constitution.

19 Those thoughts, my actions are being judged. Yet
20 they're not evil. I haven't, I haven't done anything to
21 nobody.

22 A defect so fundamental that it causes the indictment
23 no longer to be an indictment gives rise to the
24 constitutional right not to be tried. Remedies are
25 institutional guarantees that legal rights will be

1 observed and enforced to ensure credibility in a legal
2 system. Without those constitutional guarantees and the
3 remedy, all credibility and confidence is lost in the
4 legal system.

5 My confidence in the legal system has been totally
6 and completely undermined. There's been a lot of things
7 happened that don't line up with proper procedure, due
8 process, having my Sixth Amendment right denied, of having
9 my Eighth Amendment right denied. I, I don't want to get
10 ahead of myself but I'll touch on that in a moment.

11 Chief Justice -- the law that I just quoted and the
12 statement that I just quoted, I'm gonna give you some
13 references to that. Chief Justice Marshall in Marbury
14 versus Madison, (1803) 5 U.S. 1 branch, 137, 163 through
15 66, William Blackstone commentaries as well. Donald H.
16 Zeigler, Rights, Rights of Action, and Remedies: An
17 Integrated Approach, (2001), 76 Washington Law Review 67
18 at 71.

19 The Supreme Court held that federal due process
20 requires the State to prove, beyond a reasonable doubt,
21 every element of the crime charged. In order for an
22 indictment to be effective, those necessary elements, or
23 to be valid, those necessary elements actually need to be
24 found in the indictment. If not, that doesn't even give
25 me a fair an -- fair opportunity to defend myself.

1 The Due Process Clause protects a person from
2 conviction except upon proof beyond a reasonable doubt of
3 every element necessary to constitute the crime with which
4 he is charged. The Fifth Amendment provides an explicit
5 remedy. Namely that a person shall not be held to answer
6 for a capital or otherwise infamous crime if the
7 indictment is constitutionally deficient and does not
8 charge an offense.

9 An indictment is insufficient and noncompliant with
10 the Fifth Amendment if it fails to allege and identify an
11 injured victim whose injury is caused by an act that's
12 proven to be linked to the alleged defendant.

13 To define a crime, it is necessary that the
14 indictment include "every fact that is, by law, a basis
15 for imposing or increasing punishment." Apprendi versus
16 New Jersey, 530 U.S. 466, 501 (2000). Thomas J.
17 concurring.

18 An indictment is invalid on its face due to omission
19 of an essential element -- excuse me. An indictment is
20 invalid on its face due to omission of an essential
21 element and there's no accusation at all and requires an
22 arrest of judgment or dismissal of the indictment.

23 In addition to the Ninth Circuit, other circuits have
24 likewise routinely, routinely ruled that proper remedy for
25 a fatal indictment was dismissal of that indictment even

1 after guilty verdict by petit jury. Examples include
2 United States versus Keen, United States versus Huff,
3 Nelson versus United States. There's no authority to
4 support a government argument that the strength of the
5 government's case can validate an invalidated indictment
6 which was ruled to be fatally defective on appeal or
7 otherwise after timely and proper pretrial application for
8 dismissal. United States versus Mechanik, 475 U.S. 66,
9 (1986).

10 In this case the State has failed to state an offense
11 in the indictment. Therefore, the indictment failed to
12 invoke the Court's jurisdiction. Jurisdiction of the
13 Court is challenged based upon the grounds of the State
14 failing to state an offense upon which any relief could be
15 granted. These are grounds to dismiss.

16 An indictment not only cites statutory elements. "It
17 must state the species or specifics. It must descend to
18 the particulars. The U.S. versus Diecidue, Diecidue, 603
19 F.2d 535, 547, the Fifth Circuit (1979).

20 It is not sufficient that the indictment shall charge
21 the offense in the same generic terms as the definition of
22 the statute. They -- it must descend to the particulars.
23 Undoubtedly, the language of the statute may be used in
24 the general description of an offense. But it must be
25 accompanied with such a statement of the facts and

1 circumstances as will inform the accused of the specific
2 offense.

3 I'm charged with possession but what is the specific
4 offense?

5 what is the result of this object, this thing?

6 what is the result of it?

7 what is the specific offense?

8 what is the causation?

9 what happened?

10 I'm not informed. I'm not of -- apprised. Don't
11 know how to defend myself when there's not an actual
12 crime.

13 The language of the statute may be used but it's got
14 to be accompanying with facts and circumstances that will
15 inform the accused of the specific offense coming under
16 the general description with which he is charged. And
17 that's a quote from Russell versus U.S., 8 L-E-D 2d, 240,
18 251-252, (1962).

19 The State has failed to demonstrate a specific harm
20 and failed to state an offense. Again, as grounds to
21 dismiss, I'm asking the Court to dismiss on -- based upon
22 all the grounds that I'm raising here today.

23 The indictment is constitutionally deficient. No set
24 of facts on any legal theory of the case to demonstrate
25 that the plaintiff, the State, or whomever else is

1 entitled to any relief, the State failed to state facts
2 sufficient enough to constitute a cause of action. The
3 State has only repeated the conclusionary language of the
4 statute and has not provided any supporting evidence of a
5 specific offense.

6 No actual claim has been made against the alleged
7 defendant which would entitle the State nor any flesh,
8 blood, soul, any man, woman, child to any entitlement --
9 to any, to any entitlement of relief.

10 I'm trying my best not to belabor the point but the
11 State did fail to allege any injuries. And, again, that's
12 a fatal indictment. I mean -- yes, a fatally flawed
13 indictment that should be dismissed.

14 The State failed to link the questionable or childish
15 conduct as the causation of any injuries. The State did
16 not allege that itself, as plaintiff, that itself nor any
17 member of the public was a victim that has suffered any
18 injuries.

19 I thought that's what the Courts presided over when a
20 member of the public got injured, when a member of the
21 public got hurt. Well, the Court's gonna remedy that
22 situation. Somebody's gon' pay. But I haven't injured a
23 member of the public. I've not committed a crime against
24 nobody.

25 I stand before Almighty God. God is my witness. I

1 hadn't injured nobody. I haven't offended God and his
2 law. I'm a man of God. I love the Lord.

3 My folly, my actions, I have no idea anybody's gon'
4 see it. I didn't offend God and commit a sin against the
5 moral law nor the Ten Commandments and the Court should
6 preside over matters where there's a member of the public
7 harmed. That's not the case.

8 Again, the State didn't allege to be a victim.
9 Nobody else alleged to be a victim. Nobody's come
10 forward. The indictment don't state that nobody's a
11 victim.

12 The State's indictment charges a no crime -- it's a
13 bill with a charge. They want money. But they ain't no
14 crime on it.

15 Common law language should be applied when statutes
16 are interpreted. The indictment must be a plain, concise,
17 and definite written statement of essential facts that
18 would constitute the specific offense of an actual injury.
19 State's statutes, under color of law, public
20 administrative agency, state statutes, under color of law,
21 do remain silent on those required essential elements to
22 establish a crime in law, constitutional law, supreme law.

23 Stayed silent in its indictment under color of law,
24 which is a simulacrum. I don't have those notes with me.
25 But it's -- a simulacrum is a -- an appearance of

1 something that's real, something that's not actually real.
2 It has an appearance of something real. It's a fraud.

3 That's what color is. Color is an appearance of
4 something real, a simulacrum.

5 The act, actus reus, or questioned conduct in the
6 indictment was not alleged to be a causation of any kind
7 of specific harm. Causation is one of the necessary
8 elements to allege an offense. Causation or the cause or
9 the act must have been the things that set in motion
10 someone's injuries.

11 That's not the case. There must been an actual
12 offense stated upon which somebody's entitled to relief.

13 The mere language of statute is vague, unclear, and
14 remains silent under the U.S. constitutional standards.
15 Again, the State has not met the standard doctrine nor the
16 doctrine on standing.

17 The State's not met the constitutionally required
18 elements necessary to state a true crime. See Hamling
19 versus United States, 418 U.S 87, 117 (1974). Also United
20 States versus Landrum, 251 F.3d 1072, 1079, Sixth Circuit,
21 (2001).

22 But the Court -- this is what they stated. This is a
23 quote. "But the Court also stated the constitutional
24 standard must be applied with explicit reference to the
25 substantive elements in the criminal offense as defined by

1 state law. But the indictment must be a plain, concise,
2 and definite written statement of the essential facts
3 constituting the offense charged", which has not -- which
4 is -- the State's not done.

5 The Court's conclusion was that the accused should be
6 held to answer based on an indictment that was not an
7 indictment and the indictment -- again, an indictment
8 ceases to be an indictment when it does not allege all the
9 necessary elements of a crime.

10 THE COURT: Mr. Sutherland, let me interrupt you,
11 sir.

12 You've been, you've been stating your position for 30
13 minutes and I -- this Court has given you great leeway
14 because you are a pro se and I'm, and I'm willing to hear
15 you.

16 But we -- I'm not gonna stay here. It's up to this
17 Court, by our rules, to control the courtroom. I
18 understand that you want this indictment quashed. I, I
19 get that. And I also have a copy of your motion that you
20 submitted.

21 MR. SUTHERLAND: Yes, sir, it---

22 THE COURT: It's in my -- so, I'm gonna give you
23 about another 60 seconds that -- to wrap it up.

24 Okay?

25 MR. SUTHERLAND: Yes, sir.

1 well, in that case, if you will please give attention
2 to the counterclaims and defenses that I've joined. I
3 don't waive any of those counterclaims and defenses, Your
4 Honor.

5 THE COURT: I, I have them.

6 MR. SUTHERLAND: And I thank you very much for your
7 time and what I am asking of the Court is that the Court
8 would please do what I request today, Your Honor, and that
9 is to dismiss the charges with prejudice.

10 THE COURT: Thank you.

11 MR. SUTHERLAND: And, again, I thank you for your
12 time.

13 THE COURT: Thank you, Mr. Sutherland.

14 MR. SUTHERLAND: Yes, sir.

15 THE COURT: Solicitor.

16 MR. SUTHERLAND: Thank you.

17 SOLICITOR SMITH: Your Honor, as far as the, the
18 subject matter jurisdiction, Article 5, Section, Section
19 11 of the South Carolina Constitution gives the Circuit
20 Court -- shall be a general Court with original
21 jurisdiction in civil and criminal cases except those
22 cases in which exclusive jurisdiction shall be given to
23 inferior Courts and shall have such appellate jurisdiction
24 as provided by the law.

25 He is alleged to have violated 16-23-730, which is

1 possession of, of a hoax device, which is a law that was
2 passed by the Legislature.

3 I know that his contention is that there has to be a,
4 a victim, and, and certainly, in the general sense, the
5 indictment alleges against the peace and dignity and
6 again -- of the state and contrary to the statute.

7 So, there won't be a specific victim as there might
8 be in an assault and battery. But his neighborhood did
9 get partially evacuated over, over this incident and his
10 daughter called complaining of it. So there certainly is
11 a complaint.

12 But I, I would say that I don't know what his
13 authority for that is. But there's a lot people in prison
14 for jail or for crimes that don't have specific victims,
15 and if they had -- it's hard for me to believe that none
16 of them have come up with the argument that Mr. Sutherland
17 has that would apparently end all drug prosecutions and,
18 and many, many, many other crimes that don't have a
19 specific named victim.

20 So, I would submit that the Court does have
21 jurisdiction because it's a criminal law that's been
22 passed through and the process laid out in our
23 Constitution and then this Court is sitting in accordance
24 with the Constitution.

25 As far as the indictment itself, I would cite State

1 v. Curtis and, and many other cases that hold the same,
2 but that's 356 South Carolina 622, that an indictment is
3 sufficient if it apprises the defendant of the elements of
4 the offense intended to be charged and apprises the
5 defendant what he must be prepared to meet.

6 Further, an indictment is sufficient if the offense
7 is stated with sufficient certainty and particularity to
8 enable the Court to know what judgment to pronounce and
9 the defendant to know what he is called upon to answer and
10 whether he may plead an acquittal or conviction thereon.
11 An indictment phrased substantially in language of a
12 statute which creates and defines the offense is
13 ordinarily sufficient. That's citing State v. Schumacher.

14 These are United -- and these are South Carolina
15 Supreme Court cases.

16 Your Honor, I know he's citing other cases. Most of
17 them didn't come from South Carolina. I don't know the
18 particular facts of all the cases that he's citing.

19 But I would submit that, from his presentation, he
20 knows exactly what he's being called on to answer to and
21 he actually, although he says he can't defend himself of
22 the charge, he gave a defense in his presentation at
23 which -- and, and in his written documents, which is a
24 lack of a criminal intent, which, as Your Honor knows, if
25 the case were to get to a jury if we get past a directed

1 verdict, you'll instruct the, the jury that they're --
2 every crime in South Carolina requires a showing of intent
3 and it's a necessary element in addition to all the
4 elements of the statute.

5 So, he's expressed a defense and he knows how to
6 defend the charge at -- because he's, he's capable. He's
7 smart. He's done his research and, and he knows what date
8 it's about, and where it happened, and he's written
9 extensively about the incidents in his filing.

10 So, the purpose of the indictment, from the State's
11 position, has been fulfilled and he does have the notice,
12 which is the entire point of the document.

13 Again, as, as Your Honor will instruct the jury if,
14 if we get to that point, is that the indictment isn't
15 evidence and that the evidence will have to come into the
16 Court and obviously the jury, at the end, could agree that
17 he was just minding his own and didn't have a criminal
18 intent and then he will be found not guilty or if they
19 have a question about that that was what he might be doing
20 he'd be found not guilty.

21 So, we would ask Your Honor to, to not quash the
22 indictment and this case was set for trial this week.
23 We'll continue to schedule it and get it resolved.

24 And as to the -- some of his other filings mention
25 the other indictment. I've dismissed the trap gun

1 indictment some time ago. We are not, right now,
2 proceeding on that. So, to whatever extent any of his
3 arguments were about that, we, we are not pursuing that
4 charge. We're just pursuing the hoax device charge.

5 Thank you, Your Honor.

6 THE COURT: Are you also pursuing the domestic?

7 SOLICITOR SMITH: Yes. They're not from the same
8 incident, Your Honor, but that---

9 THE COURT: All right.

10 SOLICITOR SMITH: ---that charge does exist. But
11 it's not from that same night.

12 THE COURT: Okay. So it's just -- so the 16-23-0730?
13 That's the --?

14 SOLICITOR SMITH: Yes, Your Honor.

15 THE COURT: I had my law clerk print the statute.
16 That's why I asked.

17 SOLICITOR SMITH: Yes.

18 THE COURT: Okay.

19 SOLICITOR SMITH: And there's some discussion in his
20 filings about, about Ms. wells was seeking -- there's,
21 there's like two versions of that statute, a more enhanced
22 one. We're proceeding under the, the non in furtherance
23 of an additional crime, the 15 year version. We're
24 seeking the zero to one version is what the indictment
25 alleges.

1 THE COURT: Yes.

2 Okay. I understand. It's under -- you're proceed --
3 proceeding under -- the State is proceeding under the
4 misdemeanor?

5 SOLICITOR SMITH: Yes, Your Honor.

6 THE COURT: Okay. Anything further from anybody?

7 It's gon' be under advisement. Sir, I'm gon have to
8 do some reading.

9 SOLICITOR SMITH: Nothing further, Your Honor.

10 THE COURT: Okay. Thank you, Mr. Sutherland.

11 MR. SUTHERLAND: Yes, sir. Thank you.

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13 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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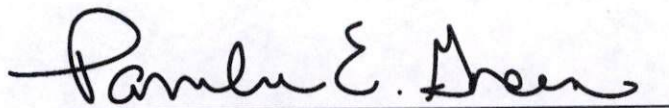
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 15th day of March, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 27th, 2024



PAMELA E. GREEN, Court Reporter