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TITO HARRIS

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JAN 11 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BERKLEY COUNTY

DEADRA L. JEFFERSON CIRCUIT COURT JUDGE

THE STATE

RESPONDENT

v

TITO HARRIS

APPELLANT

APPELLATE CASE NO 2011-190108

APPELLANT PRO-SE BRIEF

RECEIVED

JAN 11 2013

SC Court of Appeals

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THE COURT COMMITTED PLAIN AND REVERSABLE ERROR WHEN IT GAVE A BURDEN SHIFTING MALICE INSTRUCTION IN THE CASE AT BAR THAT IS IN CONFLICT WITH THE SOUTH CAROLINA SUPREME COURT RULING AS IT RELATED TO A CHARGE OF MURDER

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SC Const Art 1 § 3

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STATE V MILLER 397 SC 630, 725 SE 2d 724

STATEMENT OF ISSUE ON APPEAL

11 WHETHER THE TRIAL COURT COMMITTED PLAIN ERROR OR REVERSABLE ERROR WHEN IT GAVE A BURDENSHEFTING INSTRUCTION CHARGE TO THE JURY, AND WHETHER SUCH DENIED AND DEPRIVED DEFENDANT OF A FAIR TRIAL?

STATEMENT OF THE CASE #1

APPELLANT WAS INDICTED BY BERKLEY COUNTY GRAND JURY FOR THE OFFENSE OF MURDER R 459. HIS CASE WAS CALLED TO TRIAL ON MARCH 14, 2011 BEFORE THE HONORABLE DEBRA L. JEFFERSON, AND A JURY. DURING THE TRIAL SHE GAVE THE FOLLOWING INSTRUCTIONS AT THE CONCLUSION OF THE TRIAL THE JUDGE GAVE THE MALICE INSTRUCTION AND THE JURY FOUND HIM GUILTY OF MURDER TRANSCRIPT PAGE 426 LINES 1 - 21

ARGUMENT

THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT INSTRUCTED THE JURY THAT MALICE MAY INFERRED AND ALSO ARISE WHEN A DEED IS DONE WITH A DEADLY WEAPON

RELEVANT FACTS THE COURT STATED "MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE

INFERRED MALICE MAY ALSO ARISE WHEN A DEED IS DONE WITH A DEADLY WEAPON

A DEADLY WEAPON IS ANY ARTICLE INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE. THE FOLLOWING LADIES AND GENTLEMEN ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS -

A PISTOL, A KNIFE, A SHOTGUN, A RIFLE, A DIRK, A DASSER, A SLINGSHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIREBOMB OR MOLOTOV COCKTAIL AND LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING

THESE ARE SIMPLY EVIDENTIARY FACTS TO BE CONSIDERED BY YOU ALONG WITH THE OTHER EVIDENCE IN

CASE AND IT IS FOR YOU. THE JURY TO GIVE
THE EFFECT, VALUE AND WEIGHT YOU DECIDE IT
SHOULD HAVE.

DISCUSSION IN SANDSTROM V MONTANA 442 US 510
524 1979) THE SUPREME COURT HELD THAT THE DUE-
PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IS
VIOLATED WHEN A JURY CHARGE CREATES A MANDATO-
RY PRESUMPTION AND IMPESSIBLY SHIFTS THE BURDEN
OF PROOF TO THE DEFENDANT
CONCLUSIVE PRESUMPTIONS DEPRIVES A DEFENDANT OF
THE DUE-PROCESS OF LAW AND ARE THEREFORE UNCONSTITUTIONAL
CITING MULLANEY V. WILBUR 421 US 684 703-04
1975) HOLDING THAT THE DUE-PROCESS CLAUSE FORBIDS
A STATE FROM PLACING THE BURDEN ON THE ACCUSED
TO PROVE HIS ACTIONS REDUCED THE CRIME FROM
MURDER TO MANSLAUGHTER
HERE THE APPELLANT SHOT HIS WIFE UPON LESAL
PROVOCATION HOWEVER THERE WAS ALSO TESTIMONY
FROM APPELLANT THAT SUCH WAS NOT INTENDED AND
THAT IT WAS AN ACCIDENT
THE COURT HOWEVER DENIED AND DEPRIVED THE
APPELLANT OF THE EVIDENCE THAT TENDS TO MITIGATE
OR EXCUSE THE ACT BY NOT FOLLOWING THE NEW
RULE THAT WAS ANNOUNCED IN STATE V BELCHER
QUOTE " UNDER THE POLICY MAKING RULE IN THE
COMMON LAW WE HOLD THAT THE USE OF A
DEADLY WEAPON IMPLIED MALICE INSTRUCTION HAS
NO PLACE IN A MURDER OR ASSAULT AND BATTERY

WITH INTENT TO KILL PROSECUTION WHERE EVIDENCE
IS PRESENTED THAT WOULD REDUCE, MITIGATE EXCUSE
OR JUSTIFY THE KILLING OR THE ALLEGED ASSAULT
AND BATTERY WITH INTENT TO KILL.

THE HOLDING IN BELCHER ASS AFFIRMED IN
GRIFFIN V KENTUCKY 479 US 314, 328 (1987) HOLDING THAT
A NEW RULE FOR CONDUCT OF CRIMINAL PROSECUTIONS
IS TO BE APPLIED RETROACTIVELY TO ALL CASES PENDING
AND NOT YET FINAL SC CONST ACT V § 21

THIS NEW RULE WAS APPLICABLE TO THE APPELLANT
CASE YET THE TRIAL COURT AND THE JUDGE DID
NOT COMPLY WITH SUCH DENYING THE APPELLANT OF
EQUAL PROTECTION OF THE LAW IN THIS REGARD.
WHEREFORE APPELLANT PRAYS THAT HIS CONVICTION
BE REVERSE AND VACATED WITHIN THE INTEREST OF
JUSTICE CITING STATE V MILLER 397 SC 630 725 SE2d
724

RESPECTFULLY SUBMITTED

TITO HARRIS

PRO-SE APPELLANT

STATEMENT OF ISSUE ON APPEAL #2

WHETHER APPEAL COUNSEL RENDERED INEFFECTIVE
ASSISTANCE OF COUNSEL WHEN HE FAILED TO DISCERN
WHETHER OR NOT THE TRIAL COURT HAD JURISDICTION
TO ACT IN LIGHT THAT THE RECORD REFLECTED THAT
THIS CASE WAS TWO (2) YEARS OLD. AND IS DEVOID
AS TO WHETHER OR NOT ANY CONTINUANCE WAS GRANTED?

STATEMENT OF CASE #2

APPELLANT WAS ARRESTED ON AUGUST 2009 FOR
MURDER PURSUANT TO 16-3-10 BUT THE CASE WAS
NOT CALLED FOR TRIAL UNTIL THE WEEK OF MARCH 14-17
OF 2011 MORE THAN A YEAR WITHOUT ANY
CONTINUANCES GRANTED BY THE CHIEF ADMINISTRATIVE JUDGE
FOR THE CRIMINAL DIVISION

Argument #2

THE COURT WAS WITHOUT JURISDICTION TO ACT
BECAUSE THE TERM OF COURT HAD ENDED IN THE
MATTER AND NO CONTINUANCE HAD BEEN OBTAIN TO
CONTINUE THE CAUSE

FACTS PAGE 26 AND 27. LINE 21 AND 1-8

THE COURT LADIES AND GENTLEMEN WE ARE GOING TO
SELECT A JURY FOR THE STATE OF SOUTH CAROLINA VS

TITO FERNANDO HARRIS 2010 GS-08-0091 ITS AN INDICTMENT
FOR A MURDER.

THE INDICTMENT ALLEGES AS FOLLOWS THAT TITO FERNANDO
HARRIS DID IN BERKLEY COUNTY, ON OR ABOUT AUGUST 19TH
2009, WILLFULLY, FELONIOUSLY, AND INTENTIONALLY KILL THE VICTIM
SHANTAY HARRIS WITH MALICE AFORETHOUGHT, EITHER EXPRESS
OR IMPLIED BY MEANS OF SHOOTING THE VICTIM IN THE
HEAD WITH A GUN, AND THE VICTIM DID DIE AS A
PROXIMATE RESULT THEREOF ON AUG. 19 2009 IN
MOMCS CORNER SOUTH CAROLINA ALLEGED A VIOLATION OF
CODE SECTION 16-3-10

DISCUSSION # 2

A DEFENDANT IS CONSTITUTIONALLY ENTITLED TO THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. EVILSVILBY 469 U.S. 387 105 Sct 830 83 LEd 2d 821 (1985)

IN CRIMINAL CASES THE APPELLATE COURT SITS TO REVIEW ERROR OF LAW ONLY. STATE V. WOOD 362 SC 52 608 SE 2d 435 (App 2004)

REVIEW IS LIMITED TO DETERMINATION WHETHER THE TRIAL COURT ABUSE ITS DISCRETION. STATE V. REED 332 SC 35 503 SE 2d 747 (1998)

HERE THE TRIAL COURT ABUSED ITS DISCRETION IN CONDUCTING A JURY TRIAL OUTSIDE OF THE STATUTORY TERMS AS PROVIDED FOR WITHOUT ANY WRITTEN ORDER OR CONTINUANCE BEING GRANTED.

AND WITHOUT APPELLATE COUNSEL BRINGING SUCH TO THE ATTENTION TO THE APPEALS COURT BY WAY OF ERROR OF LAW, BECAUSE THE COURT DID NOT HAVE JURISDICTION TO ACT, AND SUCH IS NOT SUPPORTED BY THE RECORD.

MEMORANDUM OF LAW #2

COURTS KEY 65 " TERM OF GENERAL SESSIONS EXPIRES.
By OPERATION OF LAW ON COMMENCEMENT OF NEW
TERM OF COURT OF COMMON PLEAS.

THE COURT OF APPEALS HELD THAT THE TERM LACK
OF JURISDICTION " WE MEANT THAT THE COURT SIMPLY
NO LONGER HAS THE POWER TO ACT IN A PARTICULAR
MANNER BECAUSE THE TERM OF COURT HAS ENDED
SEE CS STATE V DAVIS 375 SC 12 649 SE 2d 178 (11 APP
2007) STATE V REINHART 312 SC 36 430 SE 2d 536 (7
APP 1993)

SUBJECT MATTER JURISDICTION OR THE ISSUE OF
JURISDICTION CAN BE RAISED AT ANYTIME INCLUDING
FOR THE FIRST TIME ON APPEAL AND SHOULD BE
TAKEN NOTICE OF. BY THE APPEALS COURT ON ITS OWN
MOTION.

CONCLUSION

A JUDGEMENT BY A COURT CANNOT BE AFFORDED WHERE THE COURT HAD NO RIGHT TO ACT.

COURTS 26 COURTS DO NOT HAVE POWER TO EXTEND THEIR JURISDICTION WHICH IS SET BY CONSTITUTIONAL OR STATUTORY LAW

SC CONST ART 1 § 3 "NO PERSON SHALL BE DENIED OF EQUAL PROTECTION OF THE LAW, DUE-PROCESS OF LAW PROCEDURAL DUE-PROCESS AND THE RIGHT TO BE IMMUNE FROM PROSECUTION.

PURSUANT TO RULE 7 (A) AND SC CONST ART 1 § 3 THE APPELLANT WAS IMMUNE FROM STATE ACTION THEREFORE THE CHARGE SHOULD HAVE BEEN DISMISSED AGAINST WHEREFORE APPELLANT MOVES THAT THIS APPEALS COURT DO SO WITHIN THE INTEREST OF JUSTICE.

CERTIFICATE OF SERVICE

THIS IS TO HEREBY CERTIFY THAT I TITO HARRIS
THE APPELLANT HAS CAUSED A PRO-SE BRIEF TO BE
FILED IN APPELLATE CASE NO 2011-190108 BY PLACING
SAME IN THE UNITED STATES MAIL ON THIS 8 DAY OF
January 2013 AND HAVE SERVED THE SAME UPON
THE RESPONDENTS

PERSONS SERVED

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