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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

J. Ernest Kinard, Jr., Circuit Court Judge

DETRICK WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002100

BRIEF OF PETITIONER

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INDEX

INDEX.....1
TABLE OF AUTHORITIES2
ISSUE PRESENTED3
STATEMENT4
ARGUMENT5
CONCLUSION9

TABLE OF AUTHORITIES

Cases

<u>Evans-Smith v. Taylor</u> , 19 F.3d 899, 906 (4 th Cir 1994).....	7
<u>Jackson v. Virginia</u> , 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).....	6
<u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 674, 677 (1976)	7
<u>State v. Cutler</u> , 274 S.C. 376, 264 S.E.2d 420 (1980).....	7
<u>State v. Edwards</u> , 298 S.C. 272, 379 S.E.2d 888 (1989), <u>cert. denied</u> , 493 U.S. 895, 110 S.Ct. 246 (1989).....	7
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924, 926 (1955).....	7
<u>State v. Matarazzo</u> , 262 S.C. 662, 207 S.E.2d 93, <u>cert. denied</u> , 420 U.S. 945 (1974).....	7
<u>State v. Totherow</u> , 263 S.C. 275, 210 S.E.2d 228, 230 (1974).....	7
<u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119, 120 (1921)	7
<u>United States v. Ortiz</u> , 445 F.2d 1100, 1103 (10 th Cir 1971).....	7
<u>United States v. Varoz</u> , 740 F.2d 772, 775 (10 th Cir. 1984).....	7
<u>United States v. Wiltberger</u> , (18 U.S.) 5 Wheaton 76, 95-96, 5 L.Ed. 37, 42 (1820).....	8
<u>Williams v. State</u> , 306 S.C. 89, 410 S.E.2d563 (1991)	7

ISSUE PRESENTED

Whether petitioner should have been granted a directed verdict to the charge of indecent exposure when the act did not occur in the view of any person on a street or highway and it was also not in a public place?

STATEMENT

Petitioner was convicted of indecent exposure after a bench trial before the Honorable R. Knox McMahon on June 19, 2013, in York County. He was represented by Phil Smith, Esquire. Erin Joyner, Esquire, was the assistant solicitor. Petitioner was sentenced to three (3) years incarceration concurrent to his current active sentence. (App. p. 1- p. 60) There was no appeal.

Petitioner filed an application for post-conviction relief on January 2, 2014. (App. p. 61- p. 67) Petitioner alleged he was denied his right to a direct appeal. Respondent filed a return dated April 10, 2014. (App. p. 68- p. 72) An evidentiary hearing was held on August 6, 2014, before the Honorable J. Ernest Kinard, Jr. Petitioner was present and was represented by William Michael Hemlepp, Jr., Esquire. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Both petitioner and defense counsel testified at the hearing. (App. p. 73- p. 90) On September 26, 2014, Judge Kinard filed an order denying and dismissing the application for post-conviction relief. (App. p. 91- p. 96). Because Judge Kinard found that petitioner was not entitled to a belated appeal the current issue presented was raised in the petition for writ of certiorari. On August 19, 2015, this Court granted the petition and directed the parties to submit briefs.

This brief of petitioner follows.

ARGUMENT

Petitioner should have been granted a directed verdict to the charge of indecent exposure because that act did not occur in the view of any person on a street or highway and it was also not in a public place.

S.C. Code § 16-15-130 makes indecent exposure a criminal offense. It provides:

It is unlawful for a person to willfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway.

The indictment charging petitioner with indecent exposure alleged:

That on November 15, 2012, the Defendant, Deitrick Williams, did in York County, South Carolina did willfully, maliciously and indecently expose his person in a public place or on the property of others, all in violation of Section 16-15-130, Code of Laws of South Carolina (1976, as amended).

Yolanda Hilton testified that back in November of 2012, she was employed as a nurse at the Moss Justice Detention Center in York County. As a nurse she took care of the medical needs of the inmates. In the medical unit there were eight cells. There were two cells on one end separated by two more cells. Then there were four other cells in an open area. (App. p. 14, lines 16- p. 15, lines 14)

Petitioner was an inmate and was housed in a cell in a partitioned area of the medical unit. He said, "Nurse, come here." She replied, "Hold on. I'll be there in a minute." (App. p. 16, line 5- p. 17, line 21) When she got to the cell there was a glass you could see through and a flap on the

door that was open. Because petitioner was on a suicide watch, he was dressed in a blue smock-like gown with Velcro on the shoulder and back. (App. p. 18, lines 8-21) Petitioner was partially wearing the blue smock. He had it open in the front. He was looking through the glass at her. He was masturbating and she could see his penis. He looked at her and smiled. She turned and walked away. (App. p. 19, line 4- p. 20, line 4)

At the conclusion of the State's case, defense counsel moved for a directed verdict to the charge of indecent exposure. He argued that the act was not done in the view of any person on a street or highway. He said it was not a public place because it was a secured facility and was not held open to the public. (App. p. 41, line 10- p. 42, line 23) The assistant solicitor conceded that it was not a public place. (App. p. 42, line 24- p. 43, line 6) But she argued petitioner was on the property of another. It was not his home and it was not his property. (App. p. 44, lines 13-25; App. p. 49, lines 13-15)

The trial court agreed that the detention center was not a public place but it did find that the act was on property of others. (App. p. 51, line 16- p. 52, line 6) That ruling was in error. Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the

guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence form which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case the indecent exposure statute gives absolutely no definition of what “on the property of others” means. Here we have a government detention center. Is that property of “others?” Is it harmed by indecent exposure? In reality the detention center is owned by the taxpayers. Are they harmed by something they did not see? As this Court wrote in Williams v. State, 306 S.C. 89, 410 S.E.2d563 (1991):

Penal statutes are construed strictly against the State and in favor of the defendant State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). As was aptly

summarized by Chief Justice Marshall in United States v. Wiltberger, (18 U.S.) 5 Wheaton 76, 95-96, 5 L.Ed. 37, 42 (1820):

The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislative, not the court, which is to define a crime, and ordain its punishment...

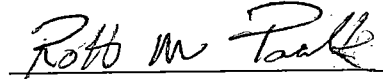
The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize is to say so.

Because the legislature gave no definition of what property of "others" means a directed verdict should have been granted in petitioner's favor

CONCLUSION

A directed verdict should be granted in petitioner's favor.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert M. Pachak". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER.

This 17th day of September, 2015

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IN THE SUPREME COURT

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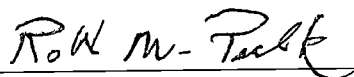
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CERTIFICATE OF SERVICE

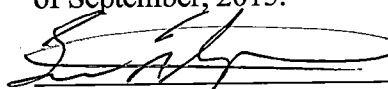
I certify that a true copy of the brief of petitioner, in this case has been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Deitrick Williams, #288124, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 17th day of September, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of September, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.