

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

RECEIVED

THE STATE

RESPONDENT

NOV 18 2015

SC Court of Appeals

V.

DON RAY GIBSON

APPELLANT

APPELLANT CASE NO. 2015-000612

MOTION TO RESOND TO ANDERS BRIEF

ON AUGUST 25, 2015, I WAS INDICTED BY THE ANDERSON COUNTY GRAND JURY FOR ASSAULT AND BATTERY WITH INTENT TO KILL AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME. ON DECEMBER 12, 2011, I PROCEEDED TO TRIAL BEFORE THE HONORABLE R. LAWTON MCINTOSH AND A JURY. THE JURY FOUND ME GUILTY OF ASSAULT AND BATTERY CHARGE AND NOT GUILTY OF THE WEAPON CHARGE.

ON DECEMBER 19, 2011, I FILED A MOTION TO VACATE THIS CONVICTION AND ON MARCH 13, 2015, JUDGE MCINTOSH ISSUED AN ORDER DENYING MY MOTION. I AM NOW ADDING TO MY CURRENT APPEAL AND THE ANDERS BRIEF FILED BY ATTORNEY BENJAMIN JOHN TRIPP, ON SEPTEMBER 17, 2015.

MY APPEAL CLEARLY STATES THE TRUE FACTS, THAT THE JURY FOUND ME GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL, BUT NOT GUILTY OF POSSESSION OF A WEAPON. THIS CAN ALSO BE FOUND IN MY TRIAL TRANSCRIPT. THIS IS CLEARLY AN INCONSISTENT VERDICT. DURING THE HEARING FOR NEW TRIAL, THE NO WEAPON, IS THE MAIN ISSUE. HOW CAN YOU BE GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL, BECAUSE THE VICTIM WAS CUT WITH A KNIFE, BUT THE JURY SAYS THE ACCUSED HAS NO KNIFE. ON PAGE 7, LINES 6-14, JUDGE MCINTOSH EVEN STATES THAT MY LAWYER, MR. MEEHANON COULD BE RIGHT. HE ALSO SAID THAT HE WOULD JUST LEAVE IT TO THE APPELLATE COURTS, BECAUSE THEY WERE SMARTER THAN HIM. I PRAY HE WAS RIGHT.

DURING TRIAL, THE STATE BROUGHT JULIE WHITFIELD AS A WITNESS. HER STATEMENT TO POLICE SAID ANOTHER PERSON CUT THE VICTIM. MS. WHITFIELD GAVE DETAILED TESTIMONY OF THE EVENTS. (PGS 47-72) SHE WAS THE STATE'S KEY WITNESS. DURING CROSS EXAMINATION BY MR MCELHANNON, MY LAWYER, SHE STATES (PG. 63) LINES 15-17, THAT SHE WAS NOT TALKING ABOUT ME, BUT THE OTHER, BIGGER MAN. IN HER STATEMENT, PG. 64, LINES 12-25, STATES AGAIN I WAS NOT THE PERSON WHO CUT THE VICTIM.

THIS HAS BEEN BROUGHT IN TO THIS APPEAL BECAUSE MR. MCELHANNON OBJECTED DURING RE-CROSS EXAMINATION BY THE STATE, MR. CAMPBELL. MR. CAMPBELL WAS LEADING MS. WHITFIELD TO CHANGING HER STORY. JUDGE MCINTOSH DID NOT RULE ON THIS OBJECTION BUT JUST TOLD MR. CAMPBELL TO "RE-PHASE." HIS QUESTION.

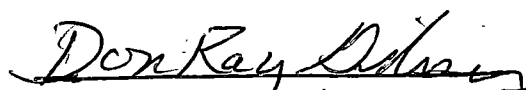
JULIE WHITFIELD CHANGED HER STORY DURING TRIAL. THE OBJECTION BY MR. MCELHANNON WAS ABOUT HER BEING LEAD BY THE STATE TO CHANGE HER STORY. THIS BRINGS DOUBT TO THE JURY. SHE EVEN TESTIFIED SEEING ME GET BEAT UP BY 5, 6 OR 7 GUYS. SHE WAS VERY DETAILED IN THIS EVENT ALSO.

THE FACT THAT THE JURY FOUND ME NOT GUILTY OF A WEAPON AND THE STATEMENT BY JULIE WHITFIELD SAYING I DID NOT CUT THE VICTIM, THAT IN FACT SOMEONE ELSE DID, SHOULD SHOW THE COURT THIS CONVICTION SHOULD BE VACATED.

JUDGE MCINTOSH ERRED IN CONCLUDING THAT THE VERDICTS WERE NOT INCONSISTENT. JUDGE MCINTOSH ERRED BY DENYING MY MOTION TO VACATE HIS CONVICTION. JUDGE MCINTOSH ERRED IN ALLOWING JULIE WHITFIELD TO CHANGE HER STATEMENT AND HE ERRED ALSO FOR ALLOWING THE STATE TO LEAD MS. WHITFIELD INTO CHANGING HER STATEMENT, AFTER AN OBJECTION BY MR. MCELHANNON.

I ALSO, WANT TO BRING TO THE COURT THAT JUDGE MCINTOSH ADMITTED AT THE HEARING FOR A NEW TRIAL THAT THE APPELATE COURT IS SMARTER THAN HIM. AGAIN, I PRAY THAT HE IS CORRECT. THE INCONSISTENCY IS OBVIOUS AND WITH THIS, ALLOWING FOR THE ASSAULT AND BATTERY CHARGE TO STAND CONSTITUTED A DENIAL OF DUE PROCESS.

THE STATEMENT BY MR. CAMPBELL AT THE MOTION FOR NEW TRIAL HEARING, ALSO SHOWS THE STATE COULD NOT BRING FORWARD A VIABLE RESPONSE TO THE WEAPON BEING THROWN OUT. YOU CAN NOT HAVE AN ASSAULT WITH A DEADLY WEAPON IF YOU DO NOT HAVE A WEAPON.


DON RAY GIBSON, APPELLATE

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