

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

RECEIVED

DEC 16 2015

The Honorable Eugene C. Griffith, Jr. Circuit Court Judge

SC Court of Appeals

Indictment № 2014-GS-24-0696
SC Court of Appeals No. 2015-002315

State of South Carolina Appellant,

v.

David Z. Ledford, Respondent.

Reply to Return to Dismiss Appeal and Remand the Case

The Respondent disagrees with the statement of facts in which the State contends that "Respondent Ledford consented to this request." [To suspend the trial during the appeal.] Return to Motion to Dismiss at 2. All the attorney for Mr. Ledford did was state that if a Notice of Intent to Appeal was filed, then the lower court loses jurisdiction to hear the case. *See*, South Carolina Appellate Court Rules, Rule 205 (Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . ."). The attorney for the Respondent did not consent to stop the trial immediately before closing argument. In fact, the attorney for the

appellate insisted that the jury that had been selected not be dismissed.

The Appellant incorrectly argues that “the State may appeal orders and rulings that significantly impair the prosecution before final judgment or when the guilty verdict is set aside based upon an error of law.” Return to Motion to Dismiss at 5. South Carolina Code of Laws § 14-3-330 requires more than that the prosecution be significantly impaired. The section says “An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action” The substantial right is such that the ruling by the lower court has the effect of terminating the action. While requiring the State to prove willfulness in this case makes the burden more difficult, it does not have the effect of terminating the action unless the State is admitting that based upon the facts, the State is unable to prove Mr. Ledford acted wilfully.

In *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987), the final decision of the *McKnight* case cited in the State’s memorandum, the ruling by the trial judge in a pre-trial motion did have the effect of ending the State’s case as all the evidence seized from the mobile home was ordered suppressed. Also, the order being appealed was a pre-trial order. No case cited by the appellant involved an appeal by the state after a jury is sworn. They all involved rulings that ended the case either through a quashing of an indictment, the pre-trial suppression of evidence, the quashing of an indictment, the granting of a new trial on an incorrect legal ground after a conviction or a declaration that an ordinance is unconstitutional.

The State has argued that the word “wilfully” is mere surplusage. But the State fails to acknowledge that the indictment with no mens rea is unconstitutional and would have

been subject to a motion to quash. *See, Morissette v. United States*, 342 U.S. 246, 248-249 (1952)(“If any state has deviated [from a men rea requirement], the exception has neither been called to our attention nor disclosed by our research.”) The State by including the word wilfully included a mens rea that made the statute and the indictment constitutional. The indictment was not subject to attack on its face.

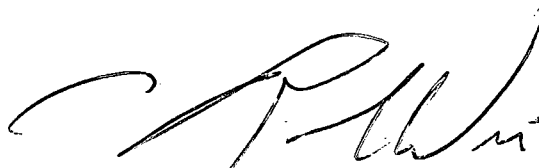
The State appears to argue that the requirement that they prove Mr. Ledford acted wilfully caught them by surprise. As they contend, “the jury charge adds a non-existent element after all the State’s evidence has been presented.” Return to Motion to Dismiss at 7. The State ignores the fact that the State elected to put the mens rea of wilful in the indictment before any testimony was taken. This was the theory they presented to the grand jury. The State could, but did not, move to delete the term “wilful” prior to the start of the trial. Mr. Ledford had the right to rely upon the indictment as presented to the grand jury.

The Respondent has not suggested that this Court dismiss this case without a review of the transcript of the testimony. The Respondent has suggested that this Court remand the case to the trial court to consider a directed verdict motion based upon the fact that the State has represented to this Court, and the trial court below, that they are unable to prove a wilful violation of the statute as alleged in the indictment.

CONCLUSION

For the foregoing reason, this Court should dismiss the appeal of the State on the ground that the issue involved is not appealable and remand the case to the trial court to consider a directed verdict motion based upon the representation of the State they cannot prove the crime as alleged in the indictment.

December 7, 2015



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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Respondent in the above entitled case. That on December 7, 2015, she did deposit in the United States Mail with proper postage affixed thereto a copy of the Request for Transcript in the above case addressed to Elizabeth White, Solicitor's Office, P.O. Box 516, Greenwood, SC 29648, J. Benjamin Aplin, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, and Court Administration, 1015 Sumter St., Ste. 200, Columbia, SC 29201.

SWORN to and Subscribed

Sandy Traynham

before me this 7 day

of December, 2015.

Amy Jane Hexter (L.S.)
Notary Public for South Carolina 11/30/22

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SC Court of Appeals

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State vs. David Z. Ledford

Dear Ms. Kitchings:

Enclosed herewith is the original and six copies of the Rely to Return to Dismiss Appeal concerning the above referenced matter, together with the original Affidavit of Service.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh

cc: Elizabeth Phillips White
Benjamin Aplin