THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LANCASTER COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2014-002704

The State, ... Respondent,

v.

Michael Wayne Sherrill,..... Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

A. LACK OF APPELLATE JURISDICTION

The Respondent stated in its brief that Appellant failed to file and serve his notice of appeal within thirty days of the sentence and therefore lacks appellate jurisdiction. The Appellant filed and served the notice of appeal on June 26, 2012, only 18 days after the Magistrate denied the motion for a new trial. Appellant falls back on S.C. Code Ann. § 22-3-1000 that states "[n]o motion for a new trial may be heard unless made within five days from rendering of the judgment. The right of appeal from the judgment exists for thirty days after the rendering of the judgement."

Respondent is correct that the Supreme Court has recognized the right to appeal at least twenty five days after the refusal of a motion of new trial as stated in State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993). Respondent is also correct that the statute as quoted in Sullivan was amended in 1999 to the current language. The Appellant is of the opinion that the phrase "rendering of the judgement" in the current section 22-3-1000 refers to the Magistrate rendering a decision on the motion for a new trial. The heading that was used for Act 78 in 1999 S.C. Acts 264 as to section 22-3-1000 was: extend time frame for appeal and allow separate appeal for restitution. While the language used in the amended act was different, there is no intent of limiting the usefulness of the statute. In State v. Brown, 358 S.C. 382, 596 S.E.2d 39 (2004), the Supreme Court pointed out in footnote No.2 that "Brown's convictions were in 1997. At that time the deadline to serve an appeal was twenty-five days after the magistrate's grant or denial of a motion for new trial. S.C.Code Ann. § 22-3-1000 (Supp. 1996). The

period was extended in 1999 to thirty days." The Supreme Court recognizes the amendment and shows that it simply adds more time to the right to appeal.

The Appellant believes that section 22-3-1000 still applies when filing a motion for new trial in Magistrate court, and allows the right of appeal for 30 days after the rendering of the judgement, which would be the decision on the motion for new trial. Furthering that point is South Carolina Rules of Criminal Procedure Rule 29. Specifically SCRCP 29 states "The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion." Appellant filed a timely motion for new trial, and after receiving the refusal of that motion for new trial, filed a timely appeal to the Sixth Circuit Court so jurisdiction is proper in the Court of Appeals.

B. ARGUMENT IS WITHOUT MERIT

The Respondent states in their Initial Brief that the circuit court properly affirmed the ruling of the magistrate because the Appellate failed to demonstrate prejudice from the alleged defects within the video. Per City of Rock Hill v. Suchenski, 374 S.C. 12, 16, 646 S.E.2d 879, 880, 881 (2007), the Supreme Court found that prejudice need not be shown for violations of S.C. Ann. § 56-5-2953. Under S.C. Ann. § 56-5-2953, a violation of the statute, with no mention of prejudice, may result in dismissal of the charges. The City of Rock Hill used the prejudice argument from State v. Huntley, 349 S.C. 1, 562 S.E.2d 472 (2002) and the Supreme Court disagreed with it, because the issue in Huntley was the implied consent statute that was silent as to the remedy for noncompliance, whereas § 56-5-2953 does provide for dismissal of charges when the

statute is inexcusably violated. The Respondent also quotes Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011) extensively and Appellant would simply stress that the Court listed in foot note four the changed language of the amended S.C. Ann. § 56-5-2953(A)(1)(a)(ii) (Supp. 2010) and that it now expressly requires the recording of field sobriety tests. The existence of the footnote would lead us to believe that the outcome of the Murphy case may have been different under the current law.

CONCLUSION

The Appellant did file a Motion for New Trial within five days of the jury verdict and also filed an appeal within thirty days of the magistrate's denial of that motion so jurisdiction is proper in the Court of Appeals. Appellant also shows that through case law and statutory interpretation, prejudice need not be shown for violations of S.C. Ann. § 56-5-2953 to result in dismissal.

Respectfully submitted,

July 30, 2015

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I have served the ***Final Reply Brief of Appellant*** on Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to attorney of record:

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I further certify that all parties required by Rule to be served have been served, this 31st day of July, 2015.

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