

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF GENERAL SESSIONS

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STATE OF SOUTH CAROLINA)
)
vs.)
)
ROBERT WRIGHT)
)
Defendant)

MAY 13 2016

SC Court of Appeals

ORDER
14-GS-36-528

FILED
NEWBERRY COUNTY
2016 MAY 9 PM 1 48
JACKIE S. BOWERS
CLERK OF COURT

The Defendant was convicted by jury on January 6, 2016 with Accessory Before the Fact to Armed Robbery and Burglary. The Defendant timely filed three Post-Trial Motions. The State is represented by Dale Scott and Taylor Daniel. Mindy Zimmerman represents the Defendant.

Motion for New Trial Based Upon Lack of

Subject Matter Jurisdiction

The Defendant argues that Section 16-1-50(1), Code of Laws for South Carolina (1976) as amended, precludes the State from prosecuting the Defendant on Accessory Before the Fact to Armed Robbery and Burglary, for lack of subject matter jurisdiction, because the Defendant was not tried either with the principal felon or after the conviction of the principal felon. Section 16-1-50 appears to have been passed in 1993.

The case of State vs. Blakely, 402 SC 650 (2013) supports the State's position that it had every right to indict and prosecute the Defendant without first convicting the principal felon or trying them at the same time. While the Court of Appeals did not reference Section 16-1-50, it

held that "Today, the accessory's culpability no longer shadows that of the principal. Accordingly, an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted". The Blakely Court cited to State vs. Massey, 267 SC 432 (1976) essentially holding to the same proposition.

Accordingly, the Defendant's Motion for New Trial on this issue is denied.

Motion for New Trial based upon

Lack of Evidence and Renewal of Motion for Directed Verdict

The Court denies this Motion and incorporates by reference herein the oral rulings made on the record at trial.

Motion for New Trial based upon

Solicitor's Closing Argument

The Defendant argues that the Solicitor made an improper closing argument when he said the following:

Pages 202-203: "And we know about those phone records. And aren't those difficult for Mr. Wright to explain, those phone records? Do you understand that that's not been contested?"

Page 206: "And, again, the one thing that--that is so pesky for Mr. Wright are these phone records. Don't you kind of wonder what was talked about for two minutes and six seconds at 10:52 PM? Don't you kind of wonder what was talked about for three minutes and fifty-five seconds at 11:08 PM? It keeps going."

"They found the phone. Why does that concern him if he doesn't have anything to do

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with it? Why does he care there's too many police? I don't think there'd be enough if somebody robbed my next-door neighbor. And why would he care about the phone?"

The Defendant claims that the above was an improper comment on the Defendant's Fifth Amendment right to remain silent and furthermore, it was an improper attempt to shift the burden of proof to the Defendant.

Right to Remain Silent: The Court must find prejudice to the Defendant. See, Gill vs. State, 346 S.C. 209 (2001) or an element of unfairness to the Defendant so strong as to deny him his due process rights. Vaughn v. State, 362 S.C. 163. The Court finds neither in this case.

The Gill Court dealt with a similar situation wherein the Solicitor, in closing, argued "They are limited as to what they can do in the case. What can they do to put up a defense in the case? There is no defense in this case." While the Gill Court did not find prejudice it held that if there were prejudice, the Court's curative instruction to the jury for the jury not to consider the Defendant's failure to testify was sufficient to cure any prejudice resulting. While in this case a curative instruction was not given, as none was requested, this Court did give the jury the standard charge for them not to consider the Defendant's failure to testify.

As to whether or not the comments in closing by the Solicitor constituted an element of unfairness thus denying the Defendant his due process rights, this Court compares the comments in this case with the comments made by the Solicitor in the Vaughn case. In the Vaughn case, the Solicitor improperly argued his personal observations about the veracity of a state's witness

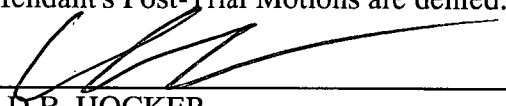
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which was not an argument on the evidence in the case. Here, the Solicitor's argument, in part, was based upon the evidence in the case.

Burden Shifting: In light of the fact that this Court does not find a violation of the Defendant's constitutional right to remain silent, the logical conclusion to make is that the Solicitor's closing did not shift the burden of proof to the Defendant.

Finally, counsel for the Defendant made the decision at trial not to object to Solicitor's closing, move for a mistrial, nor seek an immediate curative instruction.

For all of the forgoing reasons, the Defendant's Post-Trial Motions are denied.



DONALD B. HOCKER
CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

Laurens, South Carolina

Date: 5-6-16

