

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No: 2015-002315

THE STATE,

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SC Court of Appeals

Appellant,

v.

DAVID Z. LEDFORD,

Respondent.

PETITION FOR REHEARING

On February 5, 2016, this Court filed an Order granting Respondent's motion to dismiss the State's appeal in the above captioned case: "Because the ruling is not immediately appealable under section 14-3-330 of the South Carolina Code (1976 & Supp. 2015)." Appellant (the State), by and through undersigned counsel, now respectfully petitions this Court for rehearing pursuant to Rules 221(a) & 221(c), SCACR. The State hereby seeks rehearing and reinstatement of its appeal on the grounds that: (1) the action of the Court on Respondent's motion has the effect of dismissing or finally deciding the State's appeal and (2) the Court may have overlooked the existence of a November 30, 2015, "Motion to Certify Appeal" which is currently pending before the South Carolina Supreme Court. The State would respectfully show unto the Court as follows:

I.

Respondent Ledford was indicted in Greenwood County for inflicting great bodily injury upon a child in violation of S.C. Code Ann. § 16-3-95 (2003 & Supp. 2014). The indictment in this case states that Respondent Ledford:

On or about December 16, 2013, in Greenwood County, **willfully** and unlawfully inflict great bodily injury upon a child, in that said defendant Did violently shake and/or hit the victim . . . which acts caused great bodily injury to the child, in violation of the provisions of section 16-3-95 of the South Carolina Code of Laws, 1976, as amended.

(Attached as Exhibit A to Respondent Ledford's Motion to Dismiss and Remand). The statute referenced in the indictment, Section 16-3-95, states that "[i]t is unlawful to inflict great bodily injury upon a child." The statute does not contain the word "willfully."

Respondent Ledford proceeded to jury trial before the Honorable Eugene C. Griffith, Jr., and a jury. A jury charge conference was held during trial and after the close of all of the evidence and the trial court's denial of Respondent Ledford's directed verdict motion. At the conclusion of the jury charge conference, the trial court orally ruled it would give Respondent's Request to Charge No. 1, to include the definition of "willfully" but to omit the last sentence of the Request to Charge. Respondent Ledford states that the trial court pointed to the State's use of the word "willful" in the indictment in support of its decision. Respondent's Request to Charge No. 1 states:

"It is unlawful to inflict great bodily injury upon a child." To violate this statute, the state is required to prove that Zack Ledford acted wilfully. To act wilfully, the state is required to prove that Mr. Ledford knew his act would inflict great bodily injury upon a child. It is not sufficient that the state prove that he acted negligently, grossly negligent or reckless in his action. Such actions are not wilful as alleged in the indictment.

(Attached to Respondent's Motion to Dismiss and Remand as Exhibit B). The State objected to the jury instruction which was contrary to, and added an element to, the statute prescribing the offense. The State expressed a desire to appeal the ruling. The trial court agreed to recess the trial and hold the matter in abeyance without releasing the jury to allow the State to appeal its ruling.

On November 5, 2015, the State filed and served notice on appeal from the oral ruling with this Court. In the notice of appeal, the State indicates that it appeals because "that the trial court's order affects a substantial right and prevents a judgment from which an appeal might be taken."

II.

On November 10, 2015, Respondent Ledford served and filed a "Motion to Dismiss Appeal and Remand the Case" as well as a memorandum in support of his motion. He moved this Court to dismiss the State's appeal asserting "the decision of the trial court to charge the jury the definition of willfully as alleged in the State's indictment is the State's acknowledgment that its evidence is insufficient to sustain a conviction."

III.

On November 30, 2015, the State served and filed a "Return to Motion to Dismiss Appeal and Remand the Case." The State argued that even if the Court found the trial court's decision is not appealable, the only action it could take is to dismiss the appeal for lack of jurisdiction and that it could not remand to the trial court for dismissal of the charge.

IV.

Also on November 30, 2015, the State filed, pursuant to Rule 204, SCARC, a "Motion to Certify Appeal" in the South Carolina Supreme Court. The motion was served on Respondent and a copy was provided to this Court. Upon information and belief that motion has not yet been addressed and is still pending in the Supreme Court.

WHEREFORE, based on the foregoing procedural history and the arguments raised in the Motion to Certify Appeal, the State respectfully requests that this Court grant this petition for rehearing and issue an order reinstating the State's appeal, at least until such time as the Supreme Court rules on the motion to certify.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Interim Senior Assistant Deputy Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

J. Benjamin Aplin
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ATTORNEYS FOR RESPONDET

February 8, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Eugene C. Griffith, Jr., Presiding Judge

Appellate Case No: 2015-002315

THE STATE,

Appellant,

vs.

DAVID Z. LEDFORD,


Respondent.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Petition for Rehearing on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, C. Rauch Wise, Esquire, 305 Main Street, Greenwood, South Carolina 29646.

I further certify that all parties required by Rule to be served have been served.

This 8th day of February, 2016.


ANGELA BENNETT
Administrative Assistant

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Columbia, SC 29211
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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

February 8, 2016

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. David Z. Ledford
Appellate Case No: 2015-002315

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Petition for Rehearing along with proof of service in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Interim Senior Assistant Deputy Attorney General
S.C. Bar No: 8729

JBA/ab
Enclosures

cc: The Honorable Daniel E. Shearouse
C. Rauch Wise, Esquire
Ms. Trisha Allen