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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE, RESPONDENT,

V.

CRAIG PINCKNEY, APPELLANT

APPELLATE CASE NO. 2014-001230

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in granting the state's request to amend the indictment to name specifically subsections (A) (2) and (A) (4) of South Carolina Code Section 16-21-10 which was prejudicial to Pinckney because it changed the nature of the charge by emphasizing the only two subsections for which the state had evidence when the indictment designated Section 16-21-10(A) which included the four subsections, and there was no evidence for subsections (A) (1) and (A) (3).

STATEMENT OF THE CASE

On March 29, 2012, the Colleton County Grand Jury indicted Craig Pinckney on the charge of altering, forging or counterfeiting a certificate of title pursuant to South Carolina Code Section 16-21-10. On May 19-20, 2014, Pinckney proceeded to trial before the Honorable Perry M. Buckner and a jury. Pinckney was represented by Melissa Gay, and the state was represented by Reed Evans. R. 1. The jury returned a verdict of guilty as indicted. Judge Buckner sentenced Pinckney to five years suspended to the service of three years and four years probation. Restitution was ordered in the amount of $2100 to North American Title Company. R. 225, ll. 1 – 25. Pinckney's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in granting the state's request to amend the indictment to name specifically subsections (A) (2) and (A) (4) of South Carolina Code Section 16-21-10 which was prejudicial to Pinckney because it changed the nature of the charge by emphasizing the only two subsections for which the state had evidence when the indictment designated Section 16-21-10(A) which included the four subsections, and there was no evidence for subsections (A) (1) and (A) (3).

Appellant Craig Pinckney had obtained a loan on the title of his vehicle from North American Title Company in Walterboro in February 2011 in the amount of $2000. North American purchased this loan from Auto Money which satisfied his lien with Auto Money when North American assumed the loan. North American then possessed the title in their file. In May 2011, no payments had been made on the loan so North American was trying to take physical possession of the vehicle. R. 106, ll. 1 – R. 108, ll. 21; R. 110, ll. 19 – R. 111, ll. 23.

On January 20, 2012, Ms. Angela Garvin of North American received a call from the Department of Motor Vehicles (DMV) asking if North American still had a current lien on Pinckney's vehicle which they did. Ms. Garvin received a second call from DMV stating that Pinckney was in the DMV and was attempting to release the lien from the title. If the lien had been satisfied, North American would have completed the DMV form showing that the lien was satisfied. In Pinckney's case, Ms. Garvin told DMV that no payment had ever been made on the loan so the lien was still intact and for DMV not to release the lien and not to issue a title to Pinckney. R. 107, ll. 1 – R. 112, ll. 25.

Lori Minus, with DMV, testified that on January 20, 2012, Pinckney came into DMV and gave her a title application (DMV Form 400). He also presented a lien release form (DMV Form 450). R. 80, ll. 1 – R. 81, ll. 24. Ms. Minus explained that normally when a company placed a lien on a title, they would bring the lien application and the title to have the lien placed on the front of the title. Form 450 was actually a substitute for a title that has been lost, and was usually presented when the lien holder had lost the original title. Otherwise, if the company still had the lien, they would sign the front of the title releasing the lien. R. 82, ll. 10 – R. 83, ll. 25.

On January 20, 2012, Pinckney presented to Ms. Minus the Form 450 as the title with the lien satisfaction that was filled out by the manager of North American who was Jessica B. Ms. Minus could not determine the last name written on the document. Pinckney also presented the Form 400 or title application which had Pinckney's signature as the owner and the name of the insurance company on the back. This form was necessary to show ownership of the vehicle. R. 84, ll. 1 – R. 87, ll. 25. Form 450 had been completed on January 6, 2012 to show that the lien was satisfied on December 9, 2011. Once he handed her the forms, Pinckney sat in the waiting area and waited. R. 95, ll. 9 – R. 97, ll. 4.

Ms. Minus called North American to verify that the lien was satisfied but learned that the lien was still active. She then contacted the DMV fraud office. R. 93, ll. 22 – R. 94, ll. 25.

Jessica Beverly Cartrette worked at the Walterboro office of North American in 2011, but her last name was only Beverly at that time. R. 129, ll. 1 – 25. She wrote the loan in 2011 for Pinckney for his vehicle which was a black two door Tahoe. To write the loan, the customer had to bring in the car title, and she would determine the value based on the black book. The customer would then complete the loan application. R. 131, ll. 3 – R. 133, ll. 6.

Pinckney requested that North American do a buy-out and take the loan from Auto Money. In that case, when Auto Money released the lien to North American, Ms. Beverly took the title into DMV who issued a new title. North American was now shown as the lien holder on the front of the title. R. 133, ll. 7 – R. 134, ll. 4.

Ms. Beverly testified that it was her name on the Form 450 lien release (State's Exhibit 1), but it was not her signature. The signature was not her handwriting. She had left North American in November 2011 to take another job, and this document showed the lien was satisfied on December 9, 2011. R. 138, ll. 13 – R. 141, ll. 21.

In a pretrial motion, the state made a motion to amend the indictment to specifically name two subsections of the charging statute, South Carolina Code Section 16-21-10. The state argued that it was the same statute and did provide notice to Appellant Pinckney. Pinckney had ample time to prepare for the allegations in the indictment. The state's argument was that the indictment did not specifically address the particular subsections of Section 16-21-10(A). There were four subsections: (A) (1); (A) (2); (A) (3); and (A) (4). The solicitor stated that the evidence in the case would meet subsections (A) (2) and (A) (4). R. 43, ll. 8 – R. 44, ll. 25.

Subsection (A) (2) provided that Pinckney did alter, forge the release of a security interest on a form that the Department provided. Subsection (A) (4) provided that Pinckney made a material false statement or concealed any other material fact in an application for a certificate of title or registration. These are what the evidence would show. The judge responded that it was only the solicitor's opinion as to what the evidence would show. The judge needed to hear the evidence himself before he ruled on the state's motion. R. 44, ll. 18 – R. 45, ll. 18.

Defense counsel objected to any amendment of the indictment because the indictment had already been published to the unsworn jury. Defense counsel then asked the judge to read the statute in his jury charges. The judge told counsel to submit a request to charge indicating how much of the statute needed to be charged to protect the interests of her client. The judge decided to hear the state's case before he ruled on the motion to amend as he believed the motion was premature. The judge did tell the solicitor that he was not going to change this case and the charge at this point. R. 45, ll. 19 – R. 47, ll. 25.

At the close of the state's case, defense counsel moved for a directed verdict on the basis that the state had not proved the elements of the statute. Counsel argued that they were noticed through the statute and the facts did not establish the elements of Section 16-21-10(A). R. 146, ll. 1 – 18.

The solicitor argued that the statute, Section 16-21-10(A) was divided into four subsections: 1,2,3,4. The state conceded that there was no evidence as to subsections (A) (1) and (A)(3). The state's case was based on Subsections (A) (2) and (A) (4). The judge denied defense counsel's motion for a directed verdict. R. 146, ll. 21 – R. 150, ll. 21.

The judge then asked for any requests to charge. Defense counsel asked the judge to charge the entirety of the statute 16-21-10(A) including all four subsections. The solicitor did not object. The judge granted defense counsel's motion to charge all four subsections of 16-21-10 (A). R. 150, ll. 22 – R. 152, ll. 17.

At the end of the charge conference, the solicitor raised again his motion to amend the indictment. He said he understood the judge was going to charge the entire statute, but he was concerned for the record when the appellate court saw the indictment. The judge thought that by his charging the entire statute, amending the indictment was a moot issue. Defense counsel again objected by requesting that the judge not amend the indictment. The judge granted the state's motion to amend the indictment over defense counsel's objection. R. 170, ll. 1 – R. 171, ll. 25.

South Carolina Code Section 16-21-10(A) provides:

> (A) It is unlawful for a person to:
>
> (1) alter, forge, or counterfeit a certificate of title, registration card, or license plate;
>
> (2) alter or forge an assignment of a certificate of title or an assignment or release of a security interest on a certificate of title or on a form the department prescribes;
>
> (3) possess or use a certificate of title, registration car, or license plate , knowing it to have been altered, forged, or counterfeited; or
>
> (4) use a false or fictitious name or address, make a material false statement, fail to disclose a security interest, or conceal any other material fact in an application for a certificate of title or for registration.

In State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), the South Carolina Supreme Court held that if an objection to an indictment is timely made, the circuit court should judge the sufficiency of the indictment by determining whether: (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon, and (2) whether it apprises the defendant of elements of the offense that is intended to be charged. The Court also ruled that in determining whether an indictment meets the sufficiency standard, whether the indictment could be more definite or certain, is irrelevant.

In State v. Means, 367 S.C. 374, 626 S.E.2d 348 (2006), the Supreme Court ruled that in determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances, and whether the indictment could be more definite or certain is irrelevant. All the surrounding circumstances must be weighed to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment.

The Court also wrote that if a proposed amendment changes the nature of the offense set forth in the original indictment, the motion to amend must be denied unless the amended indictment states a lesser included offense of the crime charged in the original indictment, or the defendant chooses to waive presentment of the amended indictment to the grand jury and plead guilty.

The trial judge erred in granting the state's motion to amend the indictment to specifically include Subsections (A)(1) and (A) (2) of 16-21-10. This was prejudicial to Pinckney because the amendment emphasized only the two sections of the indictment. This change told the jury that they should consider only those two subsections although the original indictment simply cited 16-21-10(A). By considering all of the statute, there was a reasonable probability the jury would have found Pinckney not guilty as there was no evidence for two of the subsections according to the state.

Although the judge charged the entire statute, it was confusing to the jury to amend the indictment to emphasize only two subsections.

CONCLUSION

Based on the above, Appellant Pinckney's conviction and sentence should be reversed, and his case remanded for a new trial.

Respectfully submitted,

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of October, 2015.

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Appeal from Colleton County

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V.

CRAIG PINCKNEY, APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Craig Pinckney states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Perry M. Buckner, which was held on May 19-20, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Craig Pinckney.

Respectfully submitted,

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of October, 2015.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True–billed indictment(s);
(2) Sentencing Sheet
(3) Trial Transcripts May 19-20, 2014
(4) Court's Exhibit 2: Request to Charge
(5) Court's Exhibit 3: Note from Jury
(6) State's Exhibit 1: Form 450
(7) State's Exhibit 2: From 400
(8) State's Exhibit 3: Certificate of Title
(9) State's Exhibit 4: Paid Stamp
(10) State's Exhibit 5: Loan Contract*

I certify that this designation contains no matter which is irrelevant to this appeal.

October 7, 2015

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense

PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 7, 2015

LaNelle Cantey DuRant

LaNelle Cantey DuRant
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Craig Pinckney, #12555-171 at FCI, P.O. Box 52020-B-3226, Bennettsville, SC 29512, this 7th day of October, 2015.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of October, 2015.

____________________(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.