THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

RECEIVED
AUG 04 2016
S.C. SUPREME COURT

FRANK ADDY, JR. CIRCUIT COURT JUDGE

CASE NO. 2016-001052

THE STATE OF SOUTH CAROLINA;

RESPONDENT;

V.

MICHAEL E. HAMM;

APPELLANT.

INITIAL BRIEF OF APPELLANT

MICHAEL E. HAMM
7901 FARROW ROAD
BLDG #3 | 3RD FLOOR
COLUMBIA SC 29203
PROSE LITIGANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL JUDGE ERR IN MAKING A RULING WITHOUT SEEKING, IF THERE WAS A WAIVER OF COUNSEL OR A HEARING HELD TO MAKE SURE THE PLEA WAS KNOWINGLING, WILLFULLY MADE ALONG WITH PROCEEDING PRO SE AND WHAT WAS INVOLVED IN PROCEEDING PRO SE?

2. DID THE TRIAL JUDGE ERR IN MAKING A RULING WITHOUT LOOKING AT THE VICTIMS STATMENT THAT THERE WAS 'NO CONTACT' OR ATTEMPTED OR CRIMINAL INTENT TO THE ALLEGED LEWD ACT UPON A CHILD?

3. DID THE TRIAL JUDGE ERR IN NOT SEEING THAT IF THE VICTIM STATED 'NO CONTACT' THEN HOW COULD THE DETECTIVE STATE IN THE ARREST WARRANT AFFIDAVIT TO THE MAGISTRATE THAT I HAD VIOLATED SOUTH CAROLINA CODE OF LAW SECTION 16-15-140?

4. DID THE TRIAL JUDGE ERR IN NOT REQUESTING A FRANKS V. DELAWARE HEARING BASED ON THE CONFLICT BETWEEN WHAT THE VICTIM STATED AND THE FALSIFIED ARREST WARRANT AFFIDAVIT MADE BY THE DETECTIVE?

5. BASED ON THE JUDGES ERRORS APPELLANT IS MAKING A VERACITY CHALLENGE BASED ON THE EVIDENCE AND THE ELEMENTS USED AS THE EVIDENCE?

6. DID THE TRIAL JUDGE ERR IN MAKING A RULING WITHOUT SEEING THAT " IT HAS BEEN NOTED "THAT A JURISDICTIONAL DEFECT CANNOT BE WAIVED" OR "PROCEDURALLY DEFAULTED" AND THAT A DEFENDANT NEED NOT SHOW CAUSE AND PREJUDICE TO JUSTIFY HIS FAILURE TO RAISE ONE"?

STATEMENT OF THE CASE

ON OR ABOUT AUGUST 7, 2013 - APPELLANT FILED THIS TRYING ONCE AGAIN TO GET TO THE ELEMENTS OF THE CASE FOR THE LEWD ACT CHARGE THAT WAS BROUGHT UP ON 11/13/96 - YET - THE DETECTIVE VAN DORN DID NOT BRING CHARGES AGAINST APPELLANT UNTIL SEVEN [7] DAYS LATER.

APPELLANT, HAS TAKEN THE STATEMENTS GIVEN AND HAS KEPT ONE IN ORIGNAL FORM AND THEN REDACTED ONE TO SHOW THE TRUE ELEMENTS THAT WILL SHOW THAT HE HAS NOT VIOLATED THE LAW OF THE STATE OF SOUTH CAROLINA.

APPELLANT, HAD NO LAWYER - PROCEEDED PRO SE DUE TO HIS UP-BRINGING - THINKING THAT WHEN THE CHILD WALKED IN ON HIM MASTURBATING, THAT THIS WAS A LEWD ACT UPON A CHILD, YET, THIS WAS NEVER STATED IN COURT THAT YOU HAVE TO ATTEMPT OR COMMIT THE ACT [ENACTMENT] UPON [ON] THE BODY OF THE CHILD. THIS IS CLARIFIED IN BROCK, SUPRA, PAGE 3 OF 4.

JUSTICE THOMAS STATED: " ONE MUST PLEAD ELEMENTS AND NOT THE EVIDENCE ON WHICH HE INTENDS TO PROVE THE EXISTENCE OF SUCH ELEMENTS" [SIC] " BUT CRIMINAL INTENT "MUST" HAVE BEEN SHOWN AT THE TIME OF COMMITTING THE PREDICATE SEXUAL OFFENSE AND THE COMMISSION OF THAT OFFENSE "MUST BE" SHOWN [SIC].

STATEMENT OF THE FACTS

APPELLANT, MICHAEL E. HAMM, IN 1996, WAS FALSELY ACCUSED OF AN OFFENSE;

FALSELY ARRESTED ON A FALSIFIED ARREST WARRANT AFFIDAVIT BY DETECTIVE VAN DORN;

FALSELY ACCUSED OF HAVING SEXUAL CONTACT UNDER THE STATUTE 16-15-140, WHICH VICTIM STATED 'NOT ANY SEXUAL CONTACT BETWEEN US;

DENIED MULTIPLE TIMES A FRANKS V. DELAWARE HEARING;

DENIED THE RIGHT TO COUNSEL;

DENIED THE RIGHT OF DISCOVERY UNDER RULES;

DENIED A HEARING ON AN ACTUAL INNOCENCE AND JURISDICTIONAL DEFECT CLAIM;

1. THE TRIAL JUDGE ERRED IN NOT SEEING THERE WAS NO WAIVER OF COUNSEL OR A HEARING HELD.

IN JUNE 1999, NO COUNSEL SHOWED UP TO REPRESENT ME ON THIS DATE - EVEN THOUGH (9) NINE MONTHS EARLIER I HAD APPLIED THROUGH THE PUBLIC DEFENDERS OFFICE.

UNCOUNSELED NOLO-CONTENDERE PLEA IN THE COURT OF GENERAL SESSIONS AT A ROLL CALL HEARING. LOOKING AT P.C.R. APPLICATION NUMER II (a) I'M EXPLAINING WHAT HAPPENED. ALL IN VIOLATION OF ALABAMA V. SHELTON, 535 U.S. 654, 122 S.CT. 1764, 152 L.Ed 2d 888 (2002). ARGERSINGER V. HAMLIN, 407 U.S. 25, 92 S.CT. 2006, 32 L.Ed 2d 530 (1972). TOLLS V. STATE 371 S.C. 535, 640 S.E 2d 878 (2007) (RULED ON 9 YEARS AFTER MY PLEA AND SHOULD APPLY RETROACTIVE).

IN 2002 - THE SENTENCE WAS UNDONE WITH AN INDECENT EXPOSURE CHARGE - WHICH IS NOT ALLOWED (SEE EXHIBIT A.)

STATE HAS THE BURDEN OF ESTABLISHING VALID WAIVER OF RIGHT TO COUNSEL. U.S.C.A. CONST. AMEND. 6 & 14. BREWER V. WILLIAMS, SUPREME COURT OF THE UNITED STATES, 430 U.S. 387 (MARCH 23, 1977). STATE V. CASH, COURT OF APPEALS OF SOUTH CAROLINA, JUNE 22 1992. 390 S.C 40. PATTON V. STATE OF N.C., EFFECTIVE WAIVER OF COUNSEL CANNOT BE IMPLIED, UNITED STATES COURT OF APPEALS (4 CIR 3/25/1963) 315 F. 2d 643; JOHNSON V. ZERBST 304 U.S. 458, 58 S.CT. 1019, 82 L.Ed 2d 1461.

NOR, WAS I INFORMED OF MY RIGHT TO A DIRECT APPEAL AS A MATTER OF RIGHT - M°CRAY V. STATE 271 S.C 185, 246 S.E 2d 230, 231 (1978) THE JUDGE NEVER EVEN SUGGESTED THIS.

2. THE TRIAL JUDGE ERRED IN NOT SEEING THAT VICTIM STATED I HAD "NO CONTACT" WITH HER.

HERE IS AN INTERESTING WAY TO TRY TO PROVE MY POINT ON THE NO CONTACT AND MY WIFE CLAIMING SHE SAW ME MASTURBATING IN FRONT OF THE CHILD.

A. THERE WILL BE THE UNREDACTED VERSIONS EXHIBIT ONE AND EXHIBIT THREE,
B. THEN EXHIBIT TWO AND FOUR WILL BE REDACTED TO SHOW THE TRUTH,

I, AM GOING TO THE REDACTED TO SHOW THE TRUTH TO THE ELEMENTS TO SHOW THE TRUE EVIDENCE.

EXHIBIT TWO: RELEVANT FACTS

A. SHE CAUGHT HIM MASTURBATING IN FRONT OF THE THREE YEAR OLD VICTIM. (THIS WILL BE DISPROVEN IN EXHIBIT FOUR)

B. COMP. STATED THAT THE VICTIM WAS GOING IN AND OUT OF THE BEDROOM WHERE THE SUBJECT (HER HUSBAND) WAS SITTING ALONE IN "THE DARK." (KEY ISSUE IN THE DARK ROOM AND WE ALL KNOW THAT WHEN YOU GO FROM A WELL LIT ROOM INTO A DARK ROOM IT TAKES A MINUTE FOR THE EYES TO ADJUST.)

BB. COMP. STATED THAT SHE HAD LOOKED AROUND THE CORNER INTO THE BEDROOM AND SAW THE VICTIM AND SUBJECT STANDING IN FRONT OF EACH OTHER IN THE BATHROOM (DOORWAY). COMP. STATED THAT THE VICTIM WAS POINTING A SMALL FLASHLIGHT AT THE SUBJECT. [I WAS REACHING FOR THE FLASHLIGHT TO STOP HER FROM SEEING ANYTHING (VICTIM)]

~~R/O SPOKE WITH THE VICTIM ABOUT THE INCIDENT. WHEN R/O~~ ASKED THE VICTIM WHAT THE SUBJECT WAS DOING IN THE BATHROOM, THE VICTIM STARTED MOVING HER HAND BACK AND FORTH NEAR HER GENITAL AREA. "R/O ASKED THE VICTIM IF THE SUBJECT ~~TOUCHED~~ HER ANYWHERE AND [SHE] STATED ~~THAT~~ HE HAD NOT" (SIC).

R/O READ THE SUBJECT HIS MIRANDA RIGHTS AND QUESTIONED HIM ABOUT THE INCIDENT. "THE SUBJECT ADVISED R/O THAT HE WAS IN THE BATHROOM MASTURBATING AND THE VICTIM CAME IN BY SURPRISE, THE SUBJECT STATED THAT WHEN HE NOTICED THE VICTIM STANDING NEAR HIM, HE JUMPED... [WHAT IS STATED ABOUT THE TOILET IS TRUE, YET, I WAS DONE WITH THAT - WHEN I WAS ON MY WAY OUT OF THE BATHROOM I NOTICED A LIGHT GLOW FROM THE STREET LIGHT REFLECTING OFF THE BATHROOM MIRROR. SO, I STOOD TO THE RIGHT OF THE BATHROOM DOOR AND STARTED TO MASTURBATE, I WAS RIGHT AT CLIMAX - "WHEN I OPENED MY EYES AND SAW THE GLOW OF THE FLASHLIGHT IN THE MIRROR - SO - I SHOVED MY HARMON IN MY PANTS AND REACHED OVER TO TURN OFF THE FLASHLIGHT." THIS IS WHAT WIFE SAW NOT THE REST OF THE STORY.

EXHIBIT FOUR: RELEVANT FACTS

THIS WILL CLEAR ALOT OF THE ISSUES UP.

SECOND PARAGRAPH: "THE SUSPECT STATED THAT HE HAD BEEN IN THE BATHROOM WITH THE DOOR CLOSED MASTURBATING. SUSPECT STATES THAT THE VICTIM WALKED IN ON HIM. SUSPECT STATED THAT WHEN HE STOOD UP, HIS WIFE WALKED IN [I WAS LEANED OVER TO TURN OFF THE FLASHLIGHT.]

THIRD PARAGRAPH: REPORTING OFFICER SPOKE TO THE VICTIM WHO STATED THAT SHE WAS PLAYING WITH A FLASHLIGHT [THAT WAS GIVEN TO THE VICTIM BY THE SUSPECT. ACCORDING TO THE SUSPECTS WIFE] AND "THAT SHE WENT INTO THE BEDROOM AND THAT THE SUSPECT WAS STANDING NEAR THE ENTRANCE TO THE BATHROOM." (SIC) THIS, SHOWED WHAT I WAS DOING.

1: DOOR WAS CLOSED, 2: I WAS IN MY BATHROOM WITH NO LIGHTS ON IN THE BEDROOM OR BATHROOM; 3: THE VICTIM ADMITS SHE WALKED IN ON ME, 4: AND, "MOST IMPORTANT I DID NOT ATTEMPT OR COMMIT THE ACT AGAINST THE CHILD NOR DID THE CHILD TOUCH ME OR ME THE CHILD. (SIC)."

4A. AUTONOMY PRIVACY (1974): AN INDIVIDUAL RIGHT TO CONTROL HIS OR HER PERSONAL ACTIVITIES OR INTIMATE PERSONAL DECISIONS WITHOUT OUTSIDE INTERFERENCE, OBSERVATION, OR INTRUSION ... 'IF' THE INDIVIDUAL INTEREST IN AN ACTIVITY OR DECISION IS FUNDAMENTAL," THE STATE MUST" SHOW A COMPELLING PUBLIC INTEREST BEFORE THE PRIVATE INTEREST CAN BE OVERCOME." "IF," THE INDIVIDUALS' INTEREST IS ACKNOWLEDGED TO BE LESS THAN FUNDAMENTAL OR IS DISPUTED, THEN THE COURT MUST APPLY A BALANCING TEST, HILL V. N.C.A.A. 865 P.2d 633 (CAL 1994) [7 CAL 4TH 1, S.C. OF CALIF. IN BANK DECLINED TO BE EXTENDED BY SHEEHAN V. SAN FRANCISCO 49ERS, LTD, CAL. MARCH 2, 2009, 45 CAL. 4TH 992.] CONSTITUTIONAL LAW / RIGHT TO PRIVACY / ART 1 § 1 CAL. CONST.

4B. RIGHT OF PRIVACY (1849) CONSTITUTIONAL LAW:

THE RIGHT TO PERSONAL AUTONOMY - THE UNITED STATES CONSTITUTION DOES NOT EXPLICITLY PROVIDE FOR A RIGHT OF PRIVACY OR FOR A GENERAL RIGHT OF PERSONAL AUTONOMY, BUT, THE SUPREME COURT HAS REPEATEDLY RULED THAT "A RIGHT OF PERSONAL AUTONOMY IS IMPLIED IN THE "ZONES OF PRIVACY" CREATED BY SPECIFIC CONSTITUTIONAL GUARANTEES." "THE RIGHT OF A PERSON AND THE PERSONS PROPERTY TO BE FREE FROM UNWARRANTED PUBLIC SCRUNITY OR EXPOSURE." YET, WHEN IT WAS SHOWN THAT I HAD NOT VIOLATED ANY LAW OF THE LAND, THE DETECTIVE CAME BACK SEVEN DAYS LATER WITH A WARRANT, BASED UPON A FALSIFIED ARREST WARRANT AFFIDAVIT. EVEN WHEN IT WAS STATED NO ATTEMPT OR COMMITMENT OR TOUCHING OF ANY KIND HAD OCCURRED.

THIS AMOUNTS TO AN INVASION OF PRIVACY (1802) AN UNJUSTIFIED EXPLOITATION OF ONES PERSONALITY OR INTRUSION INTO ONES PERSONAL ACTIVITIES, ACTIONABLE UNDER THE LAW AND SOMETIMES CONSTITUTIONAL LAW.

EXHIBIT FIVE: RELEVANT FACTS

UNDER MENNA V. NEW YORK 423 U.S. 61, 96 S.CT. 241, 46 L.ED 2d 195 (1975), THE STATUTE FOR LEWD ACT UPON A MINOR, SOUTH CAROLINA CODE (1976) AND. § 16-15-140 IS UNCONSTITUTIONALLY "VAGUE" AS TO THE OFFENSE AS STATED in STATEMENT OF FACTS ISSUE TWO.

WHEN HAMM, WAS IN THE PRIVACY OF HIS OWN BATHROOM AND CHILD WALKED IN ON HIM · AND SHE PLAINLY STATES THAT "NO CONTACT" WAS MADE THEN HAMM HAS NOT VIOLATED THE LAW OF THIS STATE.

THE PLAIN LANGUAGE IN § 16-15-140 AND UNDER STATE V. BROWN 335 S.C. 267, 516 S.E 2d 212 (S.C. APP. 1999) - [ALSO, THE PERPETRATOR 'MUST' COMMIT A LEWD OR LASCIVIOUS ACT UPON THE BODY OF THE CHILD. ... THE PLAIN MEANING IN THE LAW AND WHAT VICTIM STATED, DOES NOT SHOW A VIOLATION OF THE LAW.

A CRIMINAL STATUTE IS INVALID UNDER DUE PROCESS CLAUSE, "IF IT FAILS TO GIVE A PERSON OF ORDINARY INTELLIGENCE "FAIR NOTICE THAT HIS CONTEMPLATED CONDUCT IS FORBIDDEN." UNITED STATES V. BATCHELDER 442 U.S. 114, 123 (1979) (QUOTING UNITED STATES V. HARRISS 347 US 612, 617 (1954)); SEE UNITED STATES V. LANIER 520 U.S. 259, 265 (1997) (REQUIRING "FAIR WARNING ... IN LANGUAGE THAT THE COMMON WORLD WILL UNDERSTAND, OF WHAT THE LAW INTENDS TO DO IF A CERTAIN LINE IS PASSED (QUOTING MCBOYLE V. UNITED STATES 283 U.S. 25, 27 (1931)).

WE SIMPLY HOLD THAT A PLEA OF GUILTY (HAMM, NOLO-CONTENDERE) TO A CHARGE DOES NOT WAIVE A CLAIM THAT JUDGED ON ITS FACE, THE CHARGE IS ONE THE STATE MAY NOT CONSTITUTIONALLY PROSECUTE. MENNA, 423 U.S. 61. THE LAW DOES NOT CLARIFY, THAT IF A PERSON IN THE PRIVACY OF HIS OWN HOME, IN A DARK ROOM, MASTURBATING, AND THEN A CHILD WALKS IN AND NO CONTACT IS MADE THAT THE PERSON IS IN VIOLATION OF § 16-15-140 OR ANY STATE LAW. NOR, DOES THE STATUTE "CLARIFY" WHAT A LEWD OR LASCIVIOUS ACT IS. MEDIA GENERAL COMMUNICATIONS INC. V. SOUTH CAROLINA DEPT OF REVENUE 388 S.C. 138, 694 S.E 2d 525 (SC 2010); STATE V. BAILEY 785 S.E 2d 622, 623, (S.C. APP 2016); LAMBRIES V. SALUDA COUNTY

COUNCIL, 760 S.E 2d 785, 789 (S.C. 2014); EPSTIEN V. COASTAL TIMBER CO. INC., 711 S.E 2d 912, 917 (SC 2011); AUTHORITY PRIVACY (1974); RIGHT OF PRIVACY (1849) CONSTITUTIONAL LAW; INVASION OF PRIVACY (1902).

TO READ THE STATUTE IN ANY OTHER WAY WOULD BE TO DENY THE GENERAL ASSEMBLIES USE OF THE TERM 'AND'. SEE HODGES V RAINEY 341 SC 79, 85, 533 S.E 2d 578 581 (2000) (PROVIDING THAT [W]HAT A LEGISLATURE SAYS IN "THE TEXT OF A STATUTE" IS CONSIDERED THE BEST EVIDENCE OF THE LEGISLATIVE INTENT OR WILL. THEREFORE, THE COURTS ARE BOUND TO GIVE EFFECT TO THE EXPRESSED INTENT OF THE LEGISLATURE) IN RE VINCENT J. 333 SC 233, 235, 509 S.E 2d 261, 262 (1998) (EXPLAINING THAT UNDER "THE PLAIN MEANING RULE", THE COURT SHOULD NOT ALTER THE MEANING OF A CLEAR AND UNAMBIGUOUS STATUTE.)

3. THE TRIAL JUDGE ERRED IN NOT SEEING WITH THE "NO CONTACT" THAT THE ARREST WARRANT AFFIDAVIT WAS FALSIFIED.

4. APPELLANT REQUESTING A FRANKS VS. DELAWARE HEARING ON FALSIFIED ARREST WARRANT AFFIDAVIT.

IN FRANKS, THE SUPREME COURT DEVELOPED A TWO PRONG TEST CLARIFYING WHAT A CRIMINAL DEFENDANT MUST SHOW WHEN CHALLENGING THE VERACITY OF STATEMENT MADE IN AFFIDAVIT. FRANKS VS. DELAWARE 438 U.S. 154, 98 S.CT. 2674, 57 L.ED 2d 667 (1978) UNITED STATES V. COLLEES 899 F.2d 297, 300 (4 CIR 1990).

HAMM. BELIEVES HE HAS MEET THIS TWO-PRONG TEST.

5. APPELLANT REQUESTING A VERACITY CHALLANGE.

VERACITY(ITC): HABITUAL REGARD FOR AND OBSERVANCE OF THE TRUTH, TRUTHFUL NATURE / CONSISTENCY WITH THE TRUTH, ACCURACY. STATE V. SACHS 264 S.C. 641.

HAMIR, HAS BEEN SINCE 1998 TO SHOW THE TRUTH AS TO THE INNOCENCE CHALLENGE TO NO AVAIL. NO ONE WANTS THE TRUTH TO COME OUT FOR SOME ODD REASON. HAMIR, HAS SHOWN THE TRUTH, YET, NO ONE WANT TO LISTEN.

THERE WAS NO CONTACT BETWEEN VICTIM AND HAMIR. THE COURT DID NOT EXPLAIN ANY THING TO ME AS A PROSE LITIGANT. AND DUE TO MY UP BRINGING I THOUGHT THAT THE CHILD SEEING ME MASTURBATING WAS PART OF THE STATUTE, WHICH IT IS NOT. "NO CONTACT - NO VIOLATION OF THE STATUTE - NO VIOLATION OF LAW" NORTH CAROLINA V. UREN 417 U.S. 973; 94 S.CT. 3180, 41 L ED 2d 1144 (1974). COMMENT 7 SEATON HALL L. REV. 827 844 (1976).

6. THE TRIAL JUDGE ERRED IN HIS JUDGEMENT IN A CIVIL CASE, FORM 4, CASE NO. 2013-CP-18-1859 IN THAT: IT IS SO ORDERED AND ADJUDGED: ☒ STATEMENT OF JUDGMENT BY THE COURT:

A. ... ACTION IS SUCCESSIVE WITH NO RULE OF COURT TO BACK UP THIS DECISION;

B. ... ACTUAL INNOCENCE COULD HAVE BEEN RAISED IN PRIOR PROCEEDINGS, AND CERTAINLY WAS KNOWN TO THE APPLICANT AT THE TIME OF THE INITIAL PLEA;

RELEVANT FACTS

LOOKING AT EXHIBIT ONE - SENTENCE SHEET - WHERE IT STATES ATTORNEY FOR DEFENDANT - IT SHOW "PROSE" (SIC). THEN LOOKING AT P.C.R. NUMBER 11(a) IT EXPLAINS WHAT HAPPENED ON 6/14/99.

LOOKING AT EXHIBIT TWO - THE STATUTE FOR LEWD ACT UPON A CHILD, IT DOES NOT CLARIFY WHAT A LEWD OR LASCIVIOUS ACT IS NOR DOES IT STATE THAT A CHILD SEEING YOU MASTURBATING IS IN VIOLATION NOR DID I KNOW THAT IN STATE V. BROOK 235 S.C. 267, 516 S.E. 2d 212 (S.C. APP. 1999) THAT THE COURT HAD CLARIFIED ON PAGE 3, MIDDLE OF PAGE, (ALSO, THE PERPETRATOR 'MUST' COMMIT A LEWD OR LASCIVIOUS ACT UPON THE BODY OF THE CHILD AND 'MUST' ACT WITH THE INTENT OF AROUSING, APPEARING TO, OR GRATIFYING THE LUST OR PASSIONS OR SEXUAL DESIRES OF THE PERPETRATOR OR THE MINOR CHILD." (SIC)

... MUST OR SHALL MANDATORY - BRADLEY V. DOE, APPEALS COURT OF SOUTH CAROLINA, JULY 6, 2007 374 S.C. 622, COLLINS V. DOE, SUPREME COURT OF SOUTH CAROLINA DEC. 30, 2002, 352 SC 462, MOORE V. WATERS SUPREME COURT OF SOUTH CAROLINA DEC. 31, 1926, 148 SC. 326. ...

'IF, I AM IN MY OWN BATHROOM GRATIFYING MY SEXUAL SEXUAL DESIRE AND THE CHILD WALKS IN ON ME, THEN I STOP, SO, THAT SHE CANNOT SEE ME THEN I WAS NOT IN VIOLATION OF THE LAW. THOMAS V. DAVIS, 192 F. 3d 445 (4 CIR 1999). (AT BEST, THE STATUTE MUST BE VIEWED AS AMBIGUOUS ON THIS MATTER ... [A] STATE CRIMINAL STATUTE VIOLATES DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IF THAT STATUTE IS NOT, "SUFFICIENTLY EXPLICIT TO INFORM THOSE WHO ARE SUBJECT TO IT WHAT CONDUCT ON THEIR PART WILL RENDER THEM LIABLE TO ITS PENALTIES." CONNALLY V. GENERAL, CONST. CO. 269 US 385, 391 (1926)] ... [T]HE STATUTE DOES NOT CLEARLY PUT A PERSON ON NOTICE AS TO THE PENALTY APPLICABLE TO THE CRIME, A REQUIREMENT OF THE DUE PROCESS CLAUSE.

ACTUAL INNOCENCE / A JURISDICTIONAL DEFECT

IT HAS BEEN NOTED THAT A "JURISDICTIONAL DEFECT" CANNOT BE WAIVED OR PROCEDURALLY DEFAULTED AND THAT A DEFENDANT "NEED NOT" SHOW CAUSE AND PREJUDICE TO JUSTIFY HIS FAILURE TO RAISE ONE. MCCOY V. UNITED STATES 266 F. 3d 1245, 1249 (11 CIR 2001). IT IS TRUE THAT SUPREME COURT DECISIONS FROM THE TIME - REFLECT THAT "AN ACTUAL INNOCENCE CLAIM" WAS A "UNIQUE CONSTITUTIONAL CLAIM."

IN ORDER TO SHOW "A MISCARRIAGE OF JUSTICE" THAT WILL EXCUSE A PROCEDURAL BAR, A PETITIONER MUST "MAKE A COLORABLE SHOWING OF ACTUAL INNOCENCE." HAMM HAS ATTEMPTED TO DO SO. THE COURT NEEDS TO ADDRESS A PREJUDICE CAUSE OF ACTION, SINCE HAMM HAS ESTABLISHED CAUSE.

THE ONLY ARGUABLE CAUSE HAMM HINTS AT IS NOVELTY. IT ~~HAS BEEN EXPLAINED WHAT IS REQUIRED TO SUCCESSFULLY~~ ESTABLISH THE NOVELITY OF A CLAIM AS CAUSE.

IN REED V. ROSS 468 U.S. 1, 16, 104 S CT 2901, 82 L.ED 2d 1 (1984), THE SUPREME COURT HELD " THAT WHERE A CONSTITUTIONAL CLAIM IS SO NOVEL THAT ITS LEGAL BASIS IS NOT REASONABLY AVAILABLE TO COUNSEL, [" HERE, IN HAMM'S CASE, PRO SE"] A DEFENDANT HAS CAUSE FOR HIS FAILURE TO RAISE THE CLAIM IN ACCORDANCE WITH ACCEPTABLE STATE PROCEDURES." IN ORDER TO ESTABLISH THE NOVELTY OF A CONSTITUTIONAL CLAIM TO SUFFICIENT TO PROVIDE CAUSE, A DEFENDANT MUST INITIALLY DEMONSTRATE THAT HIS SITUATION IS ONE WHERE A COURT HAS, ARTICULATED A CONSTITUTIONAL PRINCIPLE THAT HAS NOT BEEN PREVIOUSLY RECOGNIZED, BUT WHICH HAS BEEN HELD TO HAVE RETROACTIVE APPLICATION." Id AT 17, 104 S.CT. AT 2911 ... A NEW RETROACTIVE DECISION "MUST BE" SUFFICIENTLY CLEAR. BREAK WITH THE PAST, SO, THAT AN ATTORNEY REPRESENTING THE DEFENDANT WOULD NOT REASONABLY HAVE HAD THE TOOLS FOR PRESENTING THE CLAIM IN STATE COURTS." [Id AT 110-17, 104 S.CT. AT 2910-11] [SO, HAMM BEING PRO SE WITH NO ATTORNEY SHOULD CLEAR THIS BARRIER]

... HERE, THE LEGAL BASIS FOR THE RIGHT LATER RECOGNIZED IN MCCOY V. STATE (OPINION NO. 27274, FEB 6 2013) WAS NOT AVAILABLE AT THE TIME OF HAMMS SENTENCING AND EARLIER P.C.R., SMITH V. DOE 538 U.S. 84 (2013) 123 S.CT. 1140, 155 L.ED 2d 164, 71 USLW 4182.
...

CONCLUSION

WHERE STATUTES PROVIDE FOR PERFORMANCE OF ACTS BY PUBLIC OFFICERS PROTECTING PRIVATE RIGHTS OR THE PUBLIC IN THE PUBLIC INTEREST, [T]HEY ARE MANDATORY. THIS RULE HAS BEEN ENUNCIATED BY THE UNITED STATES SUPREME COURT AS FOLLOWS:

> "THE CONCLUSION TO BE DECLARED FROM THE AUTHORITIES IS, THAT WHERE POWER IS GIVEN TO PUBLIC OFFICERS . . . WHENEVER . . . INDIVIDUAL RIGHTS CALL FOR ITS EXERCISE . . . THE LANGUAGE USED . . . IS IN FACT PEREMPTORY."
> (CITING BD. OF SUPERVISORS V. UNITED STATES EX REL STATE BANKS 71 US (4 WALL) 435, 446-47, 18 L. ED 419 (1867).

FOR THE REASONS STATED HEREIN, THIS COURT SHOULD REVERSE THE JUDGEMENT OF THE CIRCUIT COURT AS TO THE ISSUES HEREIN RAISED. THE APPELLANT, MICHAEL E. HAMM, IS BEFORE THIS HONORABLE COURT TO DISMISS THE ABOVE-REFERENCED CASE.

S/ [signature]

MICHAEL E. HAMM
7901 FARROW ROAD
~~BLDG #3 (1ST) FLOOR~~
COLUMBIA SC 29203

COLUMBIA SOUTH CAROLINA
AUGUST 1, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
~~IN THE SUPREME COURT~~

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

FRANK ABBY, JR-CIRCUIT COURT JUDGE

CASE NO. 2016-001052

THE STATE OF SOUTH CAROLINA,
RESPONDENT,

V.

MICHAEL E. HAMM,
APPELLANT.

DESIGNATION ON MATTER TO BE INCLUDED
IN THE RECORD OF APPEAL

APPELLANT PROPOSES THE FOLLOWING BE INCLUDED IN THE RECORD OF APPEAL

1. REVOCATION DOCUMENT, DOCUMENT SHOWING SAME, AND SENTENCE SHEET FOR INDECENT EXPOSURE;
2. INCIDENT REPORT- ORIGINAL AND REDACTED. COMMENTARY REPORT- ORIGINAL AND REDACTED. PAGE 3 OF 4 ON STATE V. BADDICK ISSUE. ARCHIVE FOR § 16-15-140; REDACTED COMMENTARY REPORT.
3. ARREST WARRANT F-919453 [TRYING TO FIND ARREST WARRANT AFFIDAVIT TO COMPLETE #3.]
4. NONE
5. NONE
6. SENTENCE SHEET 99-GS-18-0316. ARCHIVE FOR § 16-15-140;

I CERTIFY THAT THIS DESIGNATION CONTAINS NO MATTER WHICH IS IRRELEVANT TO THIS APPEAL.

AUGUST 1, 2016

S/ MICHAEL E. HAMM
PRO SE LITIGANT