

State OF South Carolina

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In the Court of Appeals

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Appeal From Sumter County
Court of Common Pleas

S.C. SUPREME COURT

R. Ferrell Cottiratt, Jr., Circuit Court Judge

Case No: 2015-LP-43-1008

The State

Respondent,

v

Wayne Wells Jr.,

Appellant.

Pro-se Brief

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Statement of Issue(s) on Appeal

1. Was Trial Counsel Assistance ineffective when he failed to object to the Trial Court's answers that invaded the province of the jury?

2. Did Trial Counsel's failure to object amount to a mockery of justice, and deficient performance prejudice deprived Appellant of a fair trial?

Statement of the Case

The Sumner County Grand Jury indicted Appellant for Criminal Sexual Conduct (CSC) with a minor in the second degree. The case was tried November 8, 2010. Marvin Spratlin prosecuted the case and Calvin Hastic represented plaintiff. The jury found Appellant guilty as charged. In addition to ordering the placement of Appellant on the Sexual Central Registry of Child Abuse and Neglect, the Honorable J. Young sentenced Appellant to imprisonment for a period of twenty years. Judge Young then suspended the sentence to thirteen years followed by two years of probation. Appellant appealed. Susan Hackett was appointed as Appellant counsel and filed an Anders Brief to the Court of Appeals. The Appellant case was dismissed. The Appellant then filed for Post-Conviction Relief (P.C.R.). May 29, 2014 an evidentiary hearing was held. Mr. Fulton Casey Dale Cornwell represented Appellant and the Honorable R. Ferrell Cuthram, Jr. heard the case. By order Judge R. Ferrell Cuthram, Jr. denied and dismissed the Appellant's Post-Conviction Relief. Appellant appealed.

Facts

After the jurors were selected and sworn in the Trial Court explain to the jury what would be expected from them in their duty as jurors. The Trial Court informed the jurors that, "your purpose is to determine the facts of this case, and you are to determine the facts from the testimony you hear, and the other evidence that may be introduced during court. It is up to you to determine the inferences which you feel may be properly drawn from the evidence. TT. 19 lines 17-21. Now, in determining what the true facts are in this case, you must decide whether or not the testimony of the witness is believable. It will be the court responsibility to rule as a matter of law as to whether certain testimony is admissible, but once the testimony is admitted, whether or not you decide to believe it is solely for you, the jurors to determine." TT. 23 lines 10-16.

The victim testified to telling the Appellant that she was 18 years of age. TT. 39 lines 6-8. The victim also testified that she knew the Appellant probably wouldn't have talked to her if he knew she was 15, and that her deception concerning her age was a bad situation, TT. 55 lines 11-24 and that her actions were wrongdoing. TT. 60 lines 13-19. The victim testified that her friend, Brannetta, told her that she spoke to the Appellant later on in the same day and told the Appellant that the victim was actually 15 years of age, TT. 39 lines 2-5 but then she testified that the Appellant was the person that told her that he spoke to Brannetta and that she told him that the victim was 15 years of age. TT. 41 lines 15-21; TT 42 lines 6-13. When Brannetta

was called upon to testify she stated that she only knew of the Appellant because he was the brother of her cousin. TT. 68 lines 15-21. She testified that she only spoke to the Appellant once via phone and that she told him that the victim was 14 years of age. TT. 69 lines 1-13. The Appellant chose to testify and testified that the victim told him that she was 18 years of age in which he took to be true without question and believed that the victim's appearance seemed to coincide with her statement. TT. 145 lines 3-14. The Appellant testified to sticking his finger in the victim's vagina, TT. 147 lines 19-23 but introduced that if he known that the victim was 15 at the time he would not have dated her. TT. 152 lines 13-17. Appellant also testified that he never had a conversation with Brunetta and was never informed by anyone that the victim was of any other age besides 18. TT. 159 lines 2-24.

The evidence was presented to the jury and the Trial Court charged the jury that they were to consider only the testimony which has been presented from the witness stand. TT. 190 lines 4-5. In every case tried before this Court before a jury the jury is the sole and exclusive judge of the facts in this case. TT. 190 lines 17-19. As jurors, it is your duty to determine the effect, the value, weight, and the truth of the evidence that is presented during this trial. TT. 191 lines 4-6. The law makes absolutely no distinction between the weight or value to be given from either direct or circumstantial evidence nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in this case, and after weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant

not guilty. TT. 194 lines 2-10. When the Court charge the jury to all the matters of law the jury was released to begin their deliberation. Shortly afterward; the jurors sent two questions out to the Court. (1) If the defendant truly believed the victim was 18, does that matter and/or (2) is ignorance of her age no excuse? The Trial Court then stated that the correct answer were if the defendant truly believed the victim was over 18 does that matter, the answer is no, and ignorance is no excuse. The Court then gave both parties the option to object to his instruction in which they both declined. The jury then came with the verdict of guilty. TT. 198 lines 11-21; TT. 199 lines 19-25.

Arguments

Trial Counsel assistance was ineffective when he failed to object to the Trial Court's answers that invaded the province of the jury.

Trial Counsel failure to object to Trial Court's answers amounted to a mockery of justice and deficient performance prejudice and deprive the Appellant of a fair trial.

Trial Counsel assistance was ineffective in failing to object to the Trial Court's answer to the jury's questions when it invaded the province of the jury. Under the 6th Amendment jurisprudence, the two steps that are strictly for the jury is (1) determining the facts as to each element of the crime (2) applying the law as instructed by the judge to those facts. Questions of fact in criminal proceeding are to be tried by the jury. The jurors are the sole and exclusive judge of, or they have the exclusive province to find the facts, and the trial court cannot interfere with their exercise thereof. It is improper for the trial court to take a question of fact away from the jury and decide it itself, or deny the existence of any fact bearing on the issues which is in contest. 23 A C.J.S. Criminal Law § 1275

The victim admitted on the stand that she told the Appellant that she was 18 years of age. She testified that she did this at the behest of his sister, but she knew if she told the Appellant her actual age the Appellant would not have gotten involved with her. This made it clear that the victim was aware that her deception was wrong and could have had negative results, but she still lied

to fulfill her own personal agenda. The victim gave inconsistent statements when she testified that her friend told her that she had spoke to the Appellant by phone and then later testified that the Appellant, on the first day that they meet, told her that he spoke to her friend by phone and that her friend had told him that the victim was 15 years of age. When the friend, Breretta Oliver, testified she stated that she did talk to the Appellant by phone and that she had told Appellant that the victim was 14 years of age. The Appellant testified that he did not know that the victim was under the age of 18. He testified that the victim told him that she was 18 years of age and he was not informed by her or anyone else that she was not 18 years of age until the day of the incident. Appellant even admitted to putting his finger on the victim's vagina, but offered that his act was committed because he believed the victim was 18 years of age. Appellant even testified if he had known the victim was less than 18 years of age he would not have been involve with her.

All the evidence was presented to the jury and the Trial Court charge the jury correctly. They were to only consider the testimonies which was presented from the stand. As jurors, it was their duty to determine the effect, value, weight, and the truth of the evidence presented during the trial. They were to weigh all the circumstantial and direct evidence and if they were not convince of the Appellant's guilt beyond a reasonable doubt, defined as doubt that would cause a reasonable person to hesitate to act, they were to find the Appellant not guilty. When the jurors began their deliberation and sent out two

questions, "If the defendant truly believed the victim to be 18 does that matter and is his ignorance to her age an excuse"; it could have been interpreted that if not all then some of the jurors had reasonable doubt. When the Trial Court answered the jury's questions that No it did not matter if the defendant truly believed the victim to be 18 and his ignorance is no excuse he removed a controlling issue from the jury's consideration. The fact that the victim lied about her age and the Appellant believed the victim to be 18 years of age were the facts that made the case unique. The jury were to be the sole and exclusive judge of the facts and it was their duty to determine the effect, value, weight, and the truth of the evidence that was presented during the trial. If the law can make absolutely no distinction between the weight or value to be given from either direct or circumstantial evidence nor is a greater degree of certainty is required of circumstantial evidence than of direct evidence then the Court should have left the jurors free to consider the circumstance that the victim deceived the Appellant into believing that she was 18 years of age and if the Appellant had not truly believed the victim to be 18 years of age the incident would not have occurred. It was up to the jury to determine the inferences in which they feel may be properly drawn from the evidence. The inference that the incident would not have occurred if the victim did not deceive the Appellant of her age caused the jurors to hesitate to act. It was a controlling issue because the Appellant admitted to his sexual act but offered an justification for his action

It is rooted in the legal maxim ignorantia facti excusat that ignorance of a fact is an excuse; whatever is done under a

mistaken impression of a material fact is excused or provides grounds for relief. Black's Law Dictionary, 749 (7th ed 1999)

In the S.C. Code Ann. §16-3-655 B(2) the statute does not mention an element of intent or mens rea clause but neither does it deduct it from consideration. In a case tried by a jury the jurors should be left free to consider the evidence and material facts. In State v. Howell, 28 S.C. 250, 255 S.E. 617 the court said, "the jury must be left perfectly free in reaching a conclusion upon the testimonies introduced, untrammelled by any intimation from the judge as to whether certain facts at issue has been proved or not." The purpose of the section 21 of Article V of the Constitution is to prevent the trial judge from intimidating to the jury his opinion of the case what weight of credence should be given to the evidence and participating in any manner with the jury's finding of fact. This the judge cannot do. "Trial judge must submit case to jury if there is any evidence, direct or circumstantial, which reasonably tends to prove guilt of accused, or from which guilt may be fairly and logically deduced." State v. Creeks, 401 S.C. 322, 737 S.E.2d 480 (2013). The opinion of the Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) see also State v. Zerak, 261 S.C. 392, 200 S.E.2d 243 (1973)

The Trial Court's answers to the jury's questions was an invasion of the province of the jury when it removed evidence that could have fairly and logically deduced the Appellant's guilt. The Constitution protects the Appellant's rights to presenting any evidence to the jury to be consider without any influence from the judge. Since the

Trial Court answers removed the jurors reasonable doubt and the jurors were not allowed to come to their own conclusion after weighing the evidence that was presented the Appellant was deprived of his right to a fair and impartial trial. In the Trial Counsel's failure to object to the Trial Court answers to the jury when it removed evidence and was an invasion of the province of the jury his assistance was ineffective and his representation could be summarized as a mockery of justice. Trial Counsel performance prejudice and deprive the Appellant of his right to a fair trial. In his failure to object to the Trial Court's answers he did not consider what would have been in Appellant's best interests, but allowed the Trial Court to intimidate the jury into considering only specific parts of the evidence that were presented. They were not allowed to consider that the victim lied about her age. That the Appellant was ignorant to the victim's actual age and of the fact that he believed the victim was 18 or that if the victim would not have lied about her age from the beginning the crime would not have occurred. The jurors question does not only show that the jurors had reasonable doubt, but that if they were allowed to consider the circumstances freely without the intimidation from the Court there is a high probability that the Appellant would have been found not guilty. Appellant's Trial Counsel was aware of the circumstances surrounding the case and even admitted at the P.C.R. evidentiary hearing that the Appellant was adamant about having his day in Court, so he could introduce to the jury that his act was done.

Without him knowing that the victim was under the age of 18. Mr. Haste knew that Appellant's ignorance to the victim's age was a controlling issue of the case. The victim admitted that she lied to the Appellant about her age and the Appellant admitted to the sexual act but offered that his act was done believing that the victim was 18 years of age. The Appellant practiced "due diligence" in verbally asking the victim of her age before involving himself in a relationship with her and it was the negligence on the victim's behalf that brought along the circumstances. The Appellant was not given the opportunity to consider the consequences of his action because he was purposely blinded to the facts that would have made him reconsider or adjust himself to the law. The action of the Appellant only took place because of the victim's deception and as a citizen the Appellant took the only measure that could be required or expected of him in verbally asking the victim what her age was. The law does not require a person to request for identification or provide citizens with instruments that would verify the age or identification of a person that we are involve with. Since the Appellant's ignorance of the victim's actual age was not done on a breach of an absolute duty to make something safe the evidence that the victim lied about her age and the fact that the Appellant truly believed the victim to be 18 was a trier issue of the fact. It was an inference that could have been drawn from the circumstantial evidence that should have been left to the jurors to consider what weight, value, or truthfulness of the evidence was and what weight or credence it would have held with them. It was for the jury of the

Appellant's peers to consider if the Appellant action were done as a reasonable person.

On another hand the criminal charge against Appellant resulted from fraud committed by the "allege victim" the criminal proceeding against Appellant was unwarranted because "fraud and justice never dwell together." Fraus et ius nunquam cohabitant

The S.C.A.C.R. Rule 407, R.P.C. Rule 1.3 holds that a lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. Appellant only defense was the fact that the victim lied about her age to him and if he thought the victim was of age with good reason for his belief, how could his act be criminal. Mr. Hastie did not take lawful or any ethical measure to vindicate the Appellant's cause or endeavor when he failed to object to the Trial Court answers to the jury especially when the questions were concerning an issue that should have been left free for the jury to consider since some evidence was presented that supported the Appellant's allegations. If Mr. Hastie would have objected to the Trial Court's answers and request that the jury be left free to determine if they believed that the Appellant truly believed the victim to be 18 years of age and/or if Appellant's ignorance of a material fact was an excuse if he had good reason for his belief, but not his ignorance to the law the jury could have found the Appellant Not guilty, or the proceedings could have been different.

Conclusion

Appellant is respectfully requesting that this Court reverse his conviction and sentence in light of the Trial Counsel assistance was ineffective and a mockery of justice in his failure to protect Appellant's right to a fair trial in not objecting to the Trial Court's answers to the jury questions which invaded the province of the jury, removed valuable evidence from the jury consideration, and removed specific facts and the ultimate issue in the case - Appellant's knowledge of victim's age.

State OF South Carolina
County OF Sumter

IN THE COURT OF APPEAL

Case No: 2015-LP-43-1008

The State

Respondent

Certificate OF Service

v

Wayne Wells Jr

Appellant

That I, Wayne Wells, Jr. certify and declare under the penalty of perjury that I have served on the following address below; on this 1st day of Sept. 2016; a Pro Se Brief and a Certificate of Service by depositing such in the Turbeville Corr. Inst. Mailroom Office

Has sworn to and subscribed
before me this _____ day of
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