

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001013

Robert Wright,

Appellant,

v.

State of South Carolina,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Mindy W. Zimmerman, SC Bar# 75793
Post Office Box 1207
Newberry, South Carolina 29108
Attorney for Appellant
Telephone: (803) 321-0000

RECEIVED

OCT 17 2016

SC Court of Appeals

TABLE OF CONTENTS

I. Table of Authorities	2
II. Arguments	3
A. . Whether SC General Statute § 16-1-50 protects subject matter jurisdiction or indictment defects?.....	3
B. Whether the Circuit Court erred in denying Appellant’s Motion for a Directed Verdict and subsequent Motion for a New Trial, based upon the complete lack of competent evidence.....	4
C. Whether the Circuit Court erred in denying Appellants Motion for a New Trial based upon Solicitor’s Comments during closing: Violation of Defendant’s Fundamental Right to Remain Silent as Provided by the Constitution and Inappropriate Burden Shifting	5

TABLE OF AUTHORITIES

CASES

Bunkum v. Manor Properties,
467 S.E.2d 758 (S.C.App. 1996)..... 3

STATUTES

SC General Statute § 16-1-50..... 3-4

ARGUMENT

1. Whether SC General Statute § 16-1-50 protects subject matter jurisdiction or indictment defects?

While Appellant agrees that indictment defects must be raised before the jury is sworn, Appellant contends that this rule is not implicated here because there were no defects in the indictment. “The jurisdiction of a court over the subject matter of a proceeding is fundamental. Instead, SC General Statute §16-1-50 raises a procedural hurdle to subject matter jurisdiction, and “[i]ssues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by Court of Appeals on its own motion.” *Bunkum v. Manor Properties*, 467 S.E.2d 758 (S.C.App. 1996). SC General Statute Section 16-1-50 states (emphasis added), “A person who counsels, hires, or otherwise procures a felony to be committed may be indicted and convicted...as an accessory before the fact either with the principal felon or after his conviction.”

Based upon the plain language of SC General Statute Section 16-1-50, there is an additional procedural hurdle when the charge is Accessory Before the Fact. It does not require special language in the indictment, thus the Appellant’s argument does not implicate an indictment challenge.

The State points out that Appellant requested a new trial in an attempt by the State to argue that the Appellant believes the Court has subject matter jurisdiction but that the indictment is flawed. This argument is contrary to logic, as the Appellant does not

request a change to the indictment, but instead, requests a new trial in compliance with §16-1-50. The Appellant is asking for a trial under the same indictment, but either tried with the principal or after their conviction.

The Appellant agrees with the State that §16-1-50 indicates that an individual can be tried for accessory or the substantive offense, but not both. The problem is that the State's read on the statute is too limited, because the State chooses to ignore pertinent parts of the statute. If subsection (1) merely stated that a person could be convicted "as an accessory before the fact," then the States limited read would be accurate, but the State ignores the remainder of the sentence, which explains that a defendant can be convicted "either with the principal felon or after his conviction." The General Assemble did not add this language by mistake, and it is not proper for us to ignore it, as the State seeks for the Court to do.

2. Whether the Circuit Court erred in denying Appellant's Motion for a Directed Verdict and subsequent Motion for a New Trial, based upon the complete lack of competent evidence?

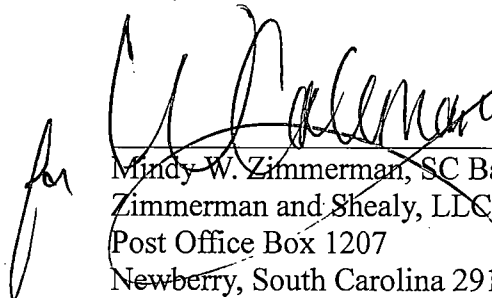
Taking the evidence in the light most favorable to the State, a directed verdict should have been granted in Mr. Wright's favor, as the State failed to provide any evidence of criminal activity by the Mr. Wright. Even if the jury took all the State's evidence as true, the only facts the State could establish is that Mr. Wright may have said the victim's home contained \$8,000 in cash and at least 4 ounces of crack cocaine, which was in fact inaccurate. The mere statement that the house contained these items does not rise to the level of a criminal offense.

Taking the case in the light most favorable to the State, the only evidence was that Appellant said they could find drugs and money in the house. There was absolutely no evidence that the defendant “advised, agreed, urged, counseled, hired, or in some way aided or abetted” Jones or Coleman to commit these charges. At best, the State’s case showed that Appellant told them they would find something in the home.

3. Whether the Circuit Court erred in denying Appellants Motion for a New Trial based upon Solicitor’s Comments during closing: Violation of Defendant’s Fundamental Right to Remain Silent as Provided by the Constitution and Inappropriate Burden Shifting?

Appellant concedes that this argument was not properly preserved for appeal; however, Appellant would argue that these comments in the closing did shift the burden to the defendant, which further supports to the Appellant’s second issue on Appeal. The Solicitor’s comments in his closing argument only point to the lack of evidence presented by the State and the need to distract the jury in an inappropriate shift of the burden, which served to confusion the jury into a conviction.

Respectfully Submitted,

 S.C. Bar # 100663
Mindy W. Zimmerman, SC Bar # 75793
Zimmerman and Shealy, LLC
Post Office Box 1207
Newberry, South Carolina 29108
(803) 321-0000
Attorney for Appellant

October 13, 2016

NOTICE OF APPEAL IN A GENERAL SESSIONS CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Case No. 2016-001013

Robert Wright,

Appellant,

v.

State of South Carolina,

Respondent.

RECEIVED
OCT 17 2016
SC Court of Appeals

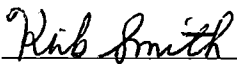
CERTIFICATE OF SERVICE

The undersigned, Mindy W. Zimmerman, hereby certifies that on the 13th day of October, 2016, has served the Initial Reply Brief of the Appellate by mailing and depositing the same with the United States Postal Service to the address below:

Solicitor David Stumbo
Eighth Circuit Solicitor's Office
Post Office Box 516
Greenwood, SC 29648
(864) 942-8800

The Honorable Alan Wilson
Assistant Attorney General Rance Saunders
Post Office Box 11549
Columbia, S.C. 29211

October 13, 2016


Kirk Smith, Paralegal
Post Office Box 1207
Newberry, South Carolina 29108

THE LAW OFFICES OF
ZIMMERMAN
& **SHEALY**
— — — — — LLC

Mindy W. Zimmerman
Benjamin L. Shealy

The Griffith Law Building
1207 Friend Street
Post Office Box 1207
Newberry, South Carolina 29108
Phone: (803) 321-0000
Facsimile: (803) 321-0407

October 13, 2016

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

RECEIVED
OCT 17 2016
SC Court of Appeals

Re: State v. Robert Wright
2016-001013

Dear Ms. Kitchings,

Enclosed for filing you should find a the Initial Reply Brief of the Appellant, along with our Certificate of Service.

Should you have any questions regarding this matter, please feel free to contact me.

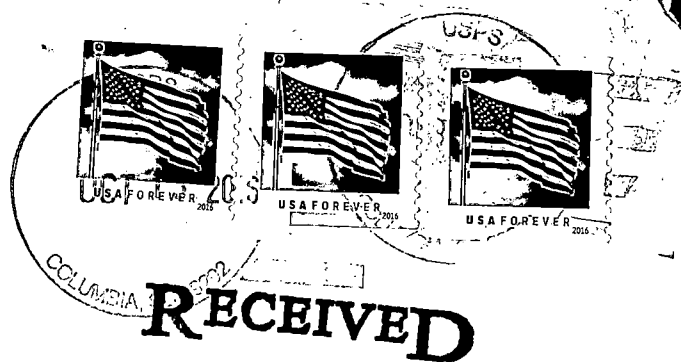
Sincerely,
Paul Smith
For Mindy W. Zimmerman

Cc: Solicitor David Stumbo
Attorney General Alan Wilson
Assistant Attorney General Ranee Saunders

THE LAW OFFICES OF
ZIMMERMAN
& **SHEALY**
— LLC

Post Office Box 1207
Newberry, SC 29108

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



RECEIVED

OCT 17 2016

SC Court of Appeals