The State Of South Carolina

For Court Of Appeals

Charleston County CourtHouse

General Sessions Court

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SC Court of Appeals

Hon. Kristi Lea Harrington
Circuit Court Judge

King Conyers,	Pro Se Brief
Petitioner	2015-002405
vs.	
State Of South Carolina	
Respondent	

King G. Conyers # 317737
Lee Correction Institution
990 Wisocky Highway / F4B1240
Bishopville, S.C. 29010

Questions Presented

Question One:

Whether Court Should Revisit State v. Owens, To Determine If Courts Are Businesses. Thereby Rendering All Court Documents As Admissible Hearsay Under Rule 803(6)(8)?

Question Two

Whether Trial Counsel Abused Its Discretion When Court Denied Defense Directed Verdict Motion?

Question Three

Whether State Failure To Serve Notice Under South Carolina Code Ann. Sec. 17-25-45 Violated Defendant Due Process Rights?

Question One:

During trial, Prosecution sought to introduce court document of arrest warrant for Conyers and defense objected on Grounds that to do so constitutes as hearsay. (Tr.Tr. PG

Accordingly, Conyers contends under State v. Owens, 378 S.C. 636 (2008) court has not clearly established what constitutes as business records, moreover, whether courts are businesses within meaning of South Carolina Civil Procedure Rule and South Carolina Rules of Evidence Rule 803(6)(8)

First, even under Rule 30 of discovery some documents can be withheld in certain instances if such documents would reveal trade secrets or other vested interest. Therefore, in order for this document introduced by Prosecution to be admissible, the Prosecution must set forth reason why it must use documentation such as arrest warrant to establish a link between Conyers and confederates.

Even under Rule 30( ) of civil Rules requires non-moving Party to establish why such documents are necessary and whether evidence can be obtained another way or from other sources. Whereas, in case at bar Prosecution already established through testimony Conyers knew Delaney (Tr.Tr. PG 443; lines 3-6; PG 461; lines 3-11). The same Rationale used for discovery is very much salvation for Rule 803 when Prosecution seeks to use court records as Prosecution seeks to do so herein. Consequently, Rule 803(8) reads as follows:

> "However, in criminal cases matters observed by Police officers and other law enforcement Personnel, Provided however, that investigative notes involving opinions, Judgments or conclusions are not admissible"
>
> Rule 803(8)

Hence, under SCRCP Rule 30 this document would be exempt from discovery and under Rule 803(8) the arrest warrant constitutes as a Judgment and is thus inadmissible as a matter of law. The language of

Rule hereinabove Prevents state from using arrest warrants and other documents relating to convictions or arrests. For instance, Prosecution told court that:

> Ms. Shealy: Because it shows that he used to live in McClellanville. And Mr. Murphy has brought up with witnesses. how would have Bez known this Guy. how would Bez have known McClellanville. So I certainly think its relevant.
>
> Tr.Tr. PG 603; lines 20-24

Therefore, the rationale advanced by Prosecution was not valid, at no time while on witness stand did Conyers deny living in Charleston and the other state witnesses confirmed his statements on stand (Tr.Tr. PG 100; lines 2-17). Similarly, defense counsel questioning witnesses about how Conyers knew victim

> Q: Okay. And did You find it odd that if King Conyers was from Columbia, he knew somebody from McClellanville?
>
> A: It was a Possibility that he was from down here and Just moved to Columbia
>
> Tr.Tr. PG 339; lines 5-8

The Prosecution argument too court mischaracterizes counsel question. counsel was designed too confirm he did not know anyone else but delaney and if only one out of all defendants knew him then they would know as Mason testified

> Q: And what do You remember him saying?
>
> A: He already dealt with this Person before.
>
> Q: So he knew him
>
> A: [indicates affirmatively]
>
> Tr.Tr. PG 256; lines 9-12

Hence Prosecution opened the door during direct examination and defense counsel was well within boundaries too follow up with this line of cross and in essence, Prosecution use of arrest warrant constitutes as improper bolstering of its case. The Owens court does not Provide Guidance, and court is asked to revisit Owens to determine if trial court was correct in allowing this testimony.

As a matter of law, the clerk of court is not a business and the Public has access to court records. Under rule 803 courts are not listed within Plain language of rule, inter alia, business records are not readily accessible as defined

by this rule.

Similarly, counsel objected on grounds this consisted of hearsay evidence and violated Conyers confrontation rights. The very reliability of this hearsay evidence means it contributed substantially to the adverse verdict and thus its admission could not be harmless. At Conyers trial for burglary and murder, State was allowed to establish a connection between his confederates and victim, with hearsay evidence purporting to recount that Conyers lived in Charleston or as prosecution characterized as defense counsel cross on how Conyers knew victim when State opened door.

It must also be made clear that our appellate courts has not adopted a residual hearsay rule exception in Rule 803(6)(8) of State Rules of evidence.

The key to harmless error analysis is not the reliability of the erroneously admitted evidence. The harmless error rule excuses the admission of inadmissible evidence only when the evidence was so innocuous or cummulative that it could not have contributed substantially to the verdict, not because inadmissible evidence is reliable.

Moreover, reliance on the reliability of inadmissible hearsay to excuse its admission would be the equivalent of adopting case law, without residual hearsay exception in rule 803(6)(8) which excludes from coverage by hearsay rule a statement that bears circumstantial guarantees of trustworthiness. Since court failed to consider that document is offered as a material fact; it is the best evidence available; and the interests of Justice will be served by admitting evidence. Trial court at no time took Judicial notice, it was not to prove a material element of offenses nor was it the only evidence available

Finally courts are not businesses but Government offices, controlled by the Legislature and statutory provisions governing its authority and duties, too maintain records of daily operations, inter alia, clerks are elected too serve county courts within which they reside.

Businesses and its employees are not State, county or city employees, but clerks and records custodians are and thus any document stored or maintained within courthouse are not admissible under rule 803(6)(8) for admissibility purposes.

Wherefore, it is prayed court grant writ

Question Two:

The court is asked to review this issue under In Re Windship, 397 U.S. 358 (1970); State v. LittleJohn, 228 S.C. 324 (1955). At the close of state's case defense moved for a directed verdict. (Tr.Tr. PG 1024; lines 2-25; PG 1025-27)

Based on testimony at trial, the Prosecution sought to establish Conyers had a connection with Charleston and McClellanville. However, the rule set forth in Opper v. United States, 348 U.S. 84 (1954) establishes state failed to prove accomplice liability.

At trial the victims daughter and Girlfriend were unable to identify the men inside their home, at best the only description Given was one of the men had dreds or braids (Tr.Tr. PG 165; lines 7-15; PG 421; lines 8-14) Only witnesses who Placed defendant at scene are his two co-defendants whose testimony can not be corroborated in order to Prove beyond reasonable doubt accomplice liability. See, State v. Gilchrist, 342 S.C. 369 ( )

Gilchrist court reasoned that under rules of evidence that in order for Conyers co-defendants statements to be admissible, it must advance conspiracy during time of its admission. Despite Gilchrist being based on rules of evidence, the Opper rule requires some application when state elicits testimony from witnesses.

At trial the court charged Jury as follows:

The state must Prove beyond a reasonable doubt, by competent evidence, the theory of the hand of one is the hand of all. A Principal in a crime is one who either actually commits the crime or who is Present aiding, abetting, or assisting in committing crime When a Person does an act in the Presence of and with the assistance of another, the act is done by both. Where two or more are acting with a common Plan or intent are Present at the commission of a crime, it does not actually matter who commits the crime....

Tr.Tr. PG 1145; lines 8-17

Trial court Prefatory "umbrella instruction" that Conyers Presence at the scene of crime, without more makes Conyers Guilty of this crime. Accordingly, the court charge was erroneous in light of evidence Presented at trial and under Rosemond v. United States, 134 S.Ct 1240 (2014) this charged is flawed in numerous ways that was not cured but rendered trial fundamentally unfair with instructions

For "Hands Of One Hands Of All" charge to Jury

First, under Rosemond, Gilchrist the state fails to advance any evidence under Deper which Proves that Conyers and others Planned this robbery. For instance, Troy Mason on direct testified that:

Q: Well, what were People talking about

A: I don't remember details of what they was talking about

Q: Was there any discussion about what Y'all were Going to do next?

A: I think it was

Tr.Tr. PG 255; lines 15-20

Q: And what was the activity that Y'all were Going to do next?

A: Oh. I Guess a robbery

Q: Okay, was everybody talking about it?

A: Not everybody

Tr.Tr. PG 256; lines 2-6

This testimony lacks trustworthiness, when Mason testimony shows how unsure he was about what took Place and conversations between Conyers and others. Furthermore during cross he testified that:

Q: And Your testimony also is is that at that Point, thats the first time of the night that somebody mentions anything about a robbery or doing anything illegal; correct?

A: Yes sir

Q: But when Ms. Shealy asked You the question Yesterday and she said what kind of discussions were You having at the house, and Your exact response was I Guess the robbery. Isn't that what You said?

A: Yes sir

Q: I Guess the robbery. So are You Guessing?

A: You asked me Just now about illegal activity. I told her Yesterday I heard Bez say he dealt with them before, speaking about drugs. Thats illegal

Q: ..... What I asked You is Your response exactly when she said did You discuss the robbery, or when You discussed anything, You said, I Guess the robbery. That was Your response; right?

A: Yes sir

Q: Why are You Guessing?

A: I don't know

Q: Do You -- tell the Jury. now do You specifically remember having any discussions of the house

A: No Sir

Tr.Tr. PG 305; lines 25; PG 306; lines 1-23

Q: Now, Mr. Mlynarczyk asked You -- when You were at Ms. Manigaults house. You said You Guessed that You Guys talked about a robbery. What I'm trying to figure out is how did You Guys -- or how did the subject even come up about a robbery?

A: I don't remember

Q: And You said that it was Conyers idea to rob the Place; correct?

A: I heard him say he already dealt with him before.

Tr.Tr. PG 338; lines 9-18

Under accomplice liability or hands of one hands of all, the state failed with Mason to show a robbery was Planned, inter alia, even under Opper trustworthiness approach with Caldwell. His testimony is not corroborated with any other testimony Presented at trial, and in light of fact both Caldwell and Mason both were Present at Manigaults home. Neither one of these defendants corroborate evidence of how and what action took Place before and during crime.

For instance, Mason testified that Conyers was standing in the doorway firing (Tr.Tr. PG 318; lines 1-18; PG 262; lines 20-25; PG 263; line 1-2) but Caldwell testified that a bald headed man was in front shooting (Tr.Tr. PG 556; lines 2-25; PG 557; lines 1-24; PG 514; lines 1-8; PG 558; lines) none of these men substantiate a finding of Guilt for Conyers and at best only raises a suspicion that Conyers could have committed this crime. Opper and Abu Ali v. United States, 528 F.3d 210 (4th Cir. 2008) require Just that. the evidence establish either a Reasonable or circumstantial connection to support any inference a crime was committed and Conyers was involved.

Likewise under State v. Jackson, 410 S.C. 584 (2014) State v. Sims, 387 S.C. 557 (2010) the court held that:

"To establish the Parties achieved illegal Purpose, thereby establishing Presence by Prearrangement, the state need not Prove a formal or expressed arrangement but can Prove the same by circumstantial evidence and conduct of Parties."

Sims, id at 565; Jackson, id at 601

Accordingly, the Rosemond court clearly delineated a standard which renders this ruling in Sims, Jackson contrary too Rosemond. Under state law, all Prosecution needs to do is Prove Conyers Presence at crime Scene. This ruling is Pitched at a high level of Generality, because as court reasoned in Rosemond that assuming arguendo Conyers was an unwilling Participant and once at crime scene could not retreat as Caldwell testified that:

A: At this Point You-- it wasn't no -- at this Point it wasn't, no, I'm not in.

Q: No turning back?

A: It wasn't

Tr.Tr. PG 501, lines 15-24

The Rosemond ruling requires, Prosecution show knowledge and with testimony Given by these two codefendant none of this was Proven. Thus, Conyers Guilt has not contrary to Prosecution Position been Proven beyond a reasonable doubt, as the only ones who can Place Conyers at crime scene testimony is not corroborated and none of the forensic evidence supports or substantiates their testimony. See, State v. Reid, 408 S.C. 461 (2014)

Wherefore, it is Prayed court Grant writ

Question Three:

At the close of trial during sentencing the state sought Life without Parole during sentencing. when questioned by court of state failure to serve notice and state confirmed intentions to do so without notice. See. State v. Massey. 2012-UP-098; James v. State, 372 S.C. 287 (2007)

When as herein trial court erred in sentencing King Conyers to life without Parole when the notice was deficient under South Carolina code Ann. Sec. 17-25-45(H) (cum. Supp. 2011) where the solicitor is required to seek or determines to seek sentencing of appellant under this section, written notice must be given by the solicitor to the appellant and his trial counsel not less than 10 days before trial. James, id. at 294,

So long as the defendant and his counsel, at least ten days Prior to trial, Possess actual notice of states intention to seek a sentence under state recidivist statute, the statute has been satisfied. See. State v. Burdette. 335 S.C. 34 (1999).

Once the indictment informs the accused of the charges against him. section 17-25-45(H) only requires the solicitor to inform defense that recidivist sentencing statute will be applied upon conviction. Burdette. id. at 39-40..

Appellant contends. that he was sentenced without due Process. Our state appellate courts have recognized that due Process Protections apply to Prisoners in sentence enhancement Proceedings. See. Tant v. South Carolina Department Of Correction 408 S.C. 334 (2014). Thus. as stated herein that state did not serve notice and the court should review under Bonner v. State. 400 S.C. 561 (2012). Thus. a challenge to sentence must be raised at trial, or the issue will not be Preserved for appellat review. See. State v. Johnston. 333 S.C. 459 (1999) Nevertheless. an exception to the General rule of issue Preservation exists authorizing the appellate court to conditionally review an unpreserved issue in the interest of Judicial economy under appropriate circumstances. A reading of these cases. allows me to believe that court has authority too adjudicate claim of state seeking LWOP sentence without serving notice violated the due Process clause of State/Federal constitution.

Neither appellant or trial counsel knew of the Recidivism charges until sentencing, but while counsel made no objections. The court allowed state to continue seeking Life without Parole when Sec. 17-25-45(H) was not followed

by Prosecution. More than fifty years ago the Supreme Court stated:

"The Prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and Prepare his defense."

In Re Oliver, 333 U.S. 257 (1948)

The due Process Protections of notice of charges and an opportunity to consult with counsel apply at sentencing as our state courts have recognized. As such, under South Carolina recidivist Provision, Conyers was subjected to a sentence much more severe than had the state not chose to invoke recidivist Provision. We do not know if state had sufficient Proof that Conyers had two Prior convictions, and we do not know whether given chance to make a defense Conyers would be able to Prove these convictions invalid.

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January 17, 2017

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Honorable Chief Clerk Of Court
South Carolina Court Of Appeals
Columbia, South Carolina 29201

Re: Conyers v. State, 2015-002405
Subject: Pro Se Brief Filing

Hon. Chief Clerk

Please find enclosed original Pro Se brief. Please file in this court and return stamped filed copy to serve on respondent and my files.

With kind Regards
s/ King Conyers
King Conyers / Pro Se

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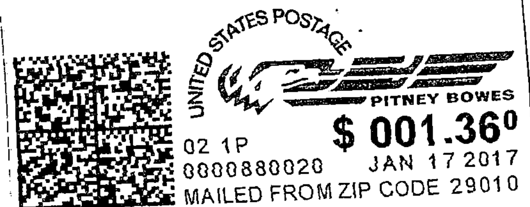

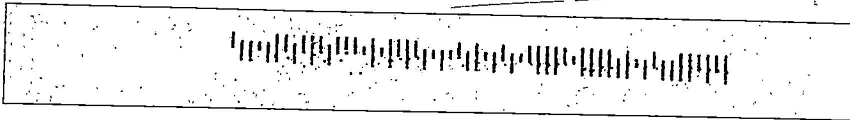

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