

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Orangeburg County

DEC 12 2016

Honorable Maite Murphy, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DANIEL YOUNG,

APPELLANT

APPELLATE CASE NO 2016-001185

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE..... 2

ARGUMENT ..... 3

CONCLUSION ..... 7

PETITION TO BE RELIEVED AS COUNSEL..... 8

**TABLE OF AUTHORITIES**

**Cases**

Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001) ..... 4

Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000) ..... 4

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)..... 4

State v. Munn, 292 S.C. 479, 357 S.E.2d 461 (1987)..... 4

State v. Young, 243 S.C. 187, 133 S.E.2d 210 (1963) ..... 4

**Statutes**

S.C. Code§15-25-25(A)..... 3

S.C. Code§16-25-20(B) ..... 3

Section 16-25-20(B), Code of Laws of South Carolina, 1976..... 3

**Rules**

Rule 203(d)(1)(B)(iv), SCACR ..... 2

**STATEMENT OF ISSUE ON APPEAL**

Whether the court had subject matter jurisdiction to accept appellant's guilty plea to domestic violence, first degree, when the indictment failed to give appellant proper notice of what he did wrong?

## **STATEMENT OF THE CASE**

Appellant was indicted for first degree domestic violence. On May 31, 2016, he appeared before the Honorable Maite Murphy in Orangeburg County and pled guilty to the charge. He was sentenced to five (5) years suspended upon service of 90 days with probation for three (3) years thereafter. Mitchell Farley, Esquire was plea counsel. Sarah Ford, Esquire was the assistant solicitor.

This appeal follows.<sup>1</sup>

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<sup>1</sup> No explanation for this appeal was in the file under Rule 203(d)(1)(B)(iv), SCACR.

## ARGUMENT

The court lacked subject matter jurisdiction to accept appellant's guilty plea to domestic violence, first degree, because the indictment failed to give appellant proper notice of what he did wrong.

This indictment charging appellant with domestic violence, first degree, reads as follows:

That Daniel Young did in Orangeburg on or about July 12, 2015 cause physical harm or injury or offer or attempt to cause physical harm or injury, with the present ability to do so under circumstances reasonably creating fear of imminent peril, to Shanicwa Mooreer, a household member and great bodily injury resulted or was likely to result, or the defendant committed Domestic Violence in the Second Degree while violating a Protection Order, or has 2 or more convictions of Domestic Violence within the last 10 years, of committed a Domestic Violence in the Second Degree; to wit: the victim did suffer from fractured ribs and three minor children were present, thereby violating Section 16-25-20(B), Code of Laws of South Carolina, 1976, as indicted.

The above indictment is vague and overbroad. It cites unnecessary verbiage from the statute which is not relevant to appellant's case. The indictment starts out with language from S.C. Code§15-25-25(A) which reads as follows:

(A) It is unlawful to:

- (1) Cause physical harm or injury to a person's own household member; or
- (2) Offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

Then the indictment tracks language in S.C. Code§16-25-20(B) which appellant is accused of violating:

(B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

- (1) great bodily injury to the person's own household member results or the act is accomplished by means likely to result in great bodily injury to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;
- (3) has two or more prior convictions of domestic violence within ten years of the current offense;
- (4) the person uses a firearm in any manner while violating the provisions of subsection (A); or
- (5) in the process of committing domestic violence in the second degree one of the following also results:
  - (a) the offense is committed in the presence of, or while being perceived by a minor;

In State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) the Court wrote the following:

Turning to South Carolina jurisprudence, we note this Court has held that subject matter jurisdiction is the power of a Court to hear and determine cases of the general class to which the proceedings in question belong, Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000); and that issues related to subject matter jurisdiction may be raised at any time. Brown v. State, 343 S.C.342, 540 S.E.2d 846 (2001). The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. *Id.* However, as was done by the Supreme Court in *Bain*, this Court broadened the meaning of jurisdiction in State v. Munn, 292 S.C. 479, 357 S.E.2d 461 (1987). Prior to Munn, the rule was that any objection to the sufficiency of the indictment, *i.e.* that the indictment was defective, had to be made before the jury was sworn. See State v. Young, 243 S.C. 187, 133 S.E.2d 210 (1963) (challenge directed to the sufficiency of the indictment rather than to the jurisdiction of the Court to try the offense

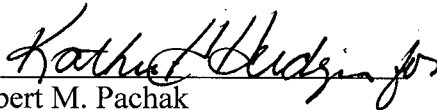
charged needed to be raised by a motion to quash before the jury was sworn). This rule was effectively altered by the Munn decision.

In Munn, citing 41 A. Jur. 2d *Indictments and Informations*, §299 (1968), we stated that defects in the indictment that are of such a fundamental character as to make the indictment wholly invalid are not subject to waiver by a defendant. We concluded that subject to certain minor exceptions, the trial courts lacks subject matter jurisdiction to convict a defendant for an offense when there is no indictment charging him with that offense when the jury was sworn.

363 S.C. at 100-101, 610.S.E.2d at 498-499.

**CONCLUSION**

Because the indictment in appellant's case did not give him proper notice of what he did wrong, his guilty plea should be vacated.

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of December, 2016.

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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."

December 12, 2016.



Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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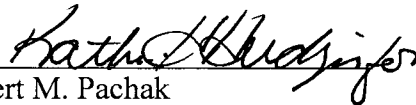
V.

DANIEL YOUNG,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Daniel Young, #15476-171, at Atlanta U.S. Penitentiary P.O. Box 150160, Atlanta, GA 30315, this 12th day of December, 2016.



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 12th day of December, 2016.

Christian Ford (L.S)

Notary Public for South Carolina  
My Commission Expires: March 1, 2026