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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

ORIGINAL

FILED
MAY 16 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

Alphonso Morgan, Jr.

APPELLANT

APPELLATE CASE NO 2016-000269

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court's denial of immunity in a hearing under the Protection of Persons and Property Act is appealable after a defendant pleads guilty to a lesser-included offense?

II. Whether the trial court erred in denying appellant immunity under the Protection of Persons and Property Act when appellant was sitting in the back seat of a car when he was attacked by the decedent?

STATEMENT OF THE CASE

A Castle Doctrine hearing was held pursuant to the Protection of Persons and Property Act¹ (PPPA) on February 1-5, 2016, before the Honorable Eugene C. Griffith, Jr. Appellant was facing a murder charge. Judge Griffith denied protection. (R. p. 526, l. 11-23) Thereafter, appellant pled guilty to voluntary manslaughter. (R. p. 527, l. 16 – p. 558, l. 17) Appellant was sentenced to twenty-five (25) years suspended upon service of twelve and a half (12½) years with three (3) years probation after the end of the community supervision.

Appellant has appealed the denial of protection under the act.

¹ S.C. Code Ann §§16-111-410 to 450 (Supp. 2010).

ARGUMENT I

The trial court's denial of immunity in a hearing under the Protection of Persons and Property Act is appealable after a defendant pleads guilty to a lesser-included offense.

An appeal is a matter of right whether a person is indigent or not. Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956). An indigent person also has the right to counsel for his appeal. Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963). He has the right to the effective assistance of counsel at trial and on appeal. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984); Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 380 (1985). Court's also may not unduly interfere with the right to counsel. Herring v. New York, 422 U.S. 853, 95 S.Ct. 2550 (1975).

In White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) the Supreme Court of South Carolina wrote that an attorney cannot make assumptions about whether his client is aware of his right to appeal. An attorney has the duty to make fully certain that his client is aware of his appellate rights. 263 S.C. at 118, 208 S.E.2d at 39. In Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) the court wrote that "an indigent defendant has the right to be informed of an appeal and the method and manner for taking the appeal." 300 S.C. at 119, 386 S.E.2d at 626. In 1991, the court cited White v. State to make it known again that an attorney "in all cases has a duty to make certain that the client is fully aware of the right to appeal." Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991).

None of the above cited cases hold that one cannot appeal a guilty plea or put any limitations on what the appeal is about. Rule 203(d)(1)(B)(iv), SCACR now provides the following:

(B) When and What to File. The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of

appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(iv) If the appeal is from a guilty plea, an Alford [2] plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed;

The above rule does not say one cannot appeal a guilty plea but that one has to give a written explanation showing that there is an issue that can be reviewed on appeal. Appellant's notice of appeal dated February 10, 2016, states that is from Judge Griffith's ruling that denied appellant's motion for immunity from prosecution pursuant to Section 16-11-450 of the South Carolina Code of Laws. In addition, appellant filed a supplemental statement pursuant to Rule 203(d)(1)(B)(iv) further explaining his appeal. This statement was filed on March 1, 2016. Respondent filed a response dated March 3, 2016.

It should be noted that in State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013) the Court held that an order denying a request for immunity was not immediately appealable. The Court did not rule that a denial of immunity is never appealable. S.C. Code §§16-11-410-450 does not state that a denial of immunity is not appealable. The maxim in criminal law is that penal statutes are to be strictly construed against the State and in favor of a defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980); Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991).

Appellant is really not appealing his guilty plea rather he is appealing the denial of his motion for immunity. This was a determination that was made pre-trial. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). He was not allowed to appeal it sooner by law. State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013). It would be a miscarriage of justice not to allow a post-trial

or post-plea appeal. Under the PPPA, the Legislature found “that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.” S.C. Code Ann §16-11-420(B). If a person is entitled to immunity, then the entire prosecution is *void ab initio*. The decision not to grant immunity should be appealable as immunity is an important right created by the Legislature.

ARGUMENT II

The trial court erred in denying appellant immunity under the Protection of Persons and Property Act because appellant was sitting in the back seat of a car when he was attacked by the decedent.

S.C. Code Ann §16-11-420(A) provides:

“It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person’s home is his castle and to extend the doctrine to include an occupied vehicle and the person’s place of business.”

Thomas Gilchrist (AKA Bug) testified for the defense. He was related to the deceased, Jamaal Aiken. On November 14, 2013, Gilchrist and appellant drove to a local joint, the Cabstand, to shoot pool and have some beer. Gilchrist drove and appellant was a passenger. Two friends, Tonya and Nick Ramsey drove in a separate car and met them there. (R. p. 13, l. 18 – p. 18, l. 19) After a while Clifton Robinson came in. (R. p. 19, l. 22 – p. 20, l. 4). Later, the decedent, Jamaal Aiken, came in with his wife, Nicole. Then Brent Williams, Quetta Spencer, and Hazel Williams showed up. (R. p. 21, l. 1 – p. 22, l. 14)

Appellant went to use the bathroom. When he came back out, he said he wanted to leave before anyone got in trouble. Appellant said Brent Williams tapped him on his hat and told him to get some balls. Gilchrist said he and appellant left. Nick and Tonya left also. They all met at Nick’s house. They stayed there about 15-20 minutes. Appellant got a phone call from Clifton Robinson telling him that he was jumped on at the Cabstand and he and his friend Shay Simon needed a ride. Nick said he would take his car. Gilchrist sat in the passenger seat and appellant sat in the rear passenger seat. (R. p. 23, l. 6 – p. 28, l. 20)

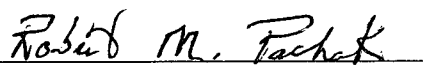
When they pulled up to the Cabstand they were parked in the front parking lot about 30 to 40 feet from the front door. There was a commotion going on. (R. p. 29, l. 1 – p. 30, l. 10) The decedent approached their car. He was walking in frenzy like something was the matter. He opened up the back door and said to appellant, “what’s up pussy boy.” He tried to reach into the car. Then a gun went off. Appellant was still in the back seat but he was leaning away from the door as the decedent reached in. The whole thing was a complete surprise to him. (R. p. 31, l. 11 – p. 32, l. 24). Gilchrist said the flash from the gun went by his face. He could see it and smell it. (R. p. 33, ll. 1-11).

Nick Ramsey testified he was the one driving the car on the way back to the Cabstand. He saw the decedent by the back passenger door. (R. p. 204, ll. 18-25). The door was open. He heard yelling by the decedent. Then he heard a gunshot. The gunshot went off in the car. (R. p. 206, ll. 5-25). A gun found on decedent’s body was stolen and 28 grams of marijuana were on his person. (R. p. 220, ll. 17-25; p. 253, ll. 2-6).

Appellant testified on the evening of the shooting he got a phone call from Shay Simon telling him that Clifton had gotten into a fight and they needed to be picked up. He, Gilchrist, and Nick rode over to pick them up. (R. p. 378, l. 20- p. 379, l. 9) When they pulled in the driveway he noticed the decedent coming toward the car with a mean look on his face. He looked in the backseat and he yanked open the door. He said to appellant, “what you going to do motherfucker?” Appellant was scared. He leaned over and shot the decedent. He said the only thing running through his mind was that the decedent was going to yank him out of the car and beat his brains out. (R. p. 380, l. 8- p. 381, l. 22; p. 382, ll. 9-20).

CONCLUSION

Appellant should be allowed to appeal the immunity decision. He should also be allowed immunity.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of June, 2017.

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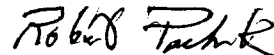
JUN 15 2017

SC Court of Appeals

CERTIFICATE OF COUNSEL PRIVATE

The undersigned certifies that to the best of my ability this Final 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."

June 15, 2017



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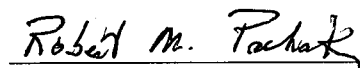
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ALPHONSO MORGAN,

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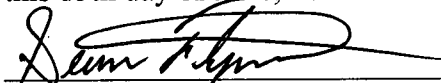
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark. R. Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of June, 2017.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of June, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022

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JUN 15 2017

SC Court of Appeals