

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

RECEIVED

Honorable Doyet A. Early, Circuit Court Judge

JUL 14 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TODD VIRGIL BROWN,

APPELLANT

APPELLATE CASE NO 2016-002481

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether there was a sufficient factual basis to accept appellant's guilty plea?

STATEMENT OF THE CASE

On January 5, 2016, appellant appeared before the Honorable Doyet A. Early, III in Aiken County and pled guilty to murder. A sentence of thirty-eight (38) years was imposed. Wallis Alves, Esq. was plea counsel. Samuel Grimes Esq. was the assistant solicitor. On January 6, 2016, plea counsel filed a motion to reconsider the sentence. That motion was denied without a hearing by a written order dated November 22, 2016.

This appeal follows.

ARGUMENT

There was an insufficient factual basis to accept appellant's guilty plea.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the accused had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 524 S.E. 2d 623 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Roddy v. State, 339 S.C. 29, 528 S.E. 2d 418 (2000). In addition; the plea judge must have a sufficient factual basis before the guilty plea can be accepted. Gaines v. State, 335 S.C. 376, 517 S.E. 2d 439 (1999).

The assistant solicitor in the following gave the following short factual basis for appellant's guilty plea:

MR. GRIMES: Your Honor, on March 19, 2014, 32-year-old Lacy Parker was shot and killed by the defendant in her home. The Aiken County Sherriff's Office was notified of this accident via a 911 call that was made by a passerby. They responded, along with EMS, to 548 Pine Street, which is the incident location.

Lacy Parker was located on the dirt ground outside of her home suffering from two gunshot wounds. She was transported to Georgia Regents University Hospital in Augusta and she was pronounced dead that same day.

The investigation into this murder led to the following information: The victim, Lacy Parker in this case, and the defendant had a romantic relationship that ended in the weeks prior to her murder. She had moved from his house back to her home at 548 Pine Street where she was living there with an individual named Nicholas Ard and her four children, one son and three daughters. The night before the murder was her 13-year-old son's birthday.

And just to kind of give you some information about how this -- the defendant's address and the victim's address were on opposite streets. And if you were to drive a vehicle between the two houses, it would probably take a few minutes. But there's some houses between the two of their houses.

And in investigating this case, myself and some investigators actually walked through one of the trails in that woods -- there's probably more -- from an area that was near the defendant's house to an area that came out on Pine Street near the victim's house, and it really was a pretty short walk.

The victim's son walked through those woods from her home to the defendant's home the night before. As I said, it was his birthday. While he was at the defendant's home, among other things, the defendant had questioned him about whether Nicholas Ard was staying at Lacy Parker's home. He thought that question, I guess, and the behavior from the defendant was strange, and ultimately asked the defendant to take him back home. The defendant took him to one of those trails where he walked him back home.

The following morning is when this incident took place. The -- Nicholas Ard indicated that he was home. This was around 7:00 in the morning. The victim, Lacy Parker, basically took her kids out to the school bus to get on the school bus and leave for school.

When she came back into the home, she came to the bedroom door. He was inside the bedroom. She told him that she loved him, and she shut the bedroom door. He indicated that around that time the front door was busted open and he heard the defendant -- he heard the defendant ask where Nicholas Ard was, Nicholas Ard being him.

Her response was, I told you he's not here. That response led us to believe that the defendant had actually been outside and had already confronted Lacy outside prior to her coming into the

home about whether Nicholas Ard was there and, presumably, was there waiting for the children to leave for school.

Nicholas Ard indicated that it would have been strange behavior for her to come and tell him that she loved him and shut the bedroom door. He reports hearing at that time Lacy screaming and the defendant beating her. This would have occurred in the kitchen/ living room area which would be close to the entrance to the home. He reported hearing Lacy ask, "Why are you doing this to me" and "Todd, have you lost your mind," to which the defendant responded yes.

Nick said at that point he heard what he believed was a gunshot and he actually jumped out of the window and ran around the side of the house and ultimately ran to the road. The front yard of this home was not very big, so the distance between the road and the front of this home wasn't very far.

When Nick got to the street, he frantically waved down a car that was passing by. This was somebody unrelated to any of this incident. But the driver of that vehicle was taking her child to school. She stopped and assisted Nick in dialing 911. I think she had initially handed him the phone, but he wasn't really able to communicate, so she took the phone back and began communicating with 911.

Nick had told her that a man was trying to kill him, and the driver reported hearing at that time a lady scream and a gunshot. She got the phone back from Nick and then she heard two more gunshots. Nick reports at this time he would have been standing at the road, not immediately in front of the house, but at a diagonal angle in front of the house with a view of the front yard of this home.

And he indicates that while he was standing there at the road during this 911 call that he watched Lacy Parker run from the house. She jumped off the porch and she fell face first about ten feet away and she didn't move. He said at this point the defendant walked up to her, pointed the gun at her, and shot her as she laid there on the ground. The defendant is then said to have run into the woods.

Your Honor, a later interview with the defendant's daughter indicated that -- or revealed, rather, that the defendant then, at that point, called her and asked her to come pick him up. He ran through the woods and came out of the woods, kind of the opposite direction he would be if he was going to his own house, near a church. And his daughter picked him up at that church and took him home.

The evidence collected by the sheriff's office in this case is significant and it confirms the accounts from the witnesses. The defendant was located later that same morning at his home not

long after this murder took place by the sheriff's office. His daughter was there. She indicated in her interview that she brought him home, he gave her, I guess, a bag with his dirty clothes and shoes in it, and told her to take the trash out to the road. The sheriff's office located those items in the trash can that day.

When they arrived, he was in the bathroom cleaning up. The clothes and shoes found in that trash can by the sheriff's office were collected for DNA testing of apparent blood stains. The DNA confirmed that the clothes belonged to the defendant and they confirmed that the blood was the DNA of Lacy Parker.

You Honor, during the struggle inside this house -- and there are blood stains inside this house -- it's evident that there was a significant struggle inside the house prior to them coming into the yard when Nicholas Ard reports that the defendant essentially executed Lacy Parker. There's blood stains inside the house.

Also found inside the house were a pair of glasses. The interview with the defendant's daughter essentially revealed that when she picked up the defendant, he didn't have his glasses. The glasses that were collected from the scene were tested. There were blood stains on them. The blood stains were Lacy Parker's.

The glasses themselves were also examined by Walmart Vision Center in North Augusta who was able to indicate to us that those are the same type of glasses sold to Todd Brown.

The sweatshirt found in the trash by the sheriff's office was tested additionally for gunshot residue and was positive for gunshot residue. There were three shell casings, I believe, located at the scene.

There were two bullets recovered from Lacy Parker's body. The shell casings were .380 caliber. The bullets were consistent with .380 caliber. And that, along with a statement from Nicholas Ard indicating that there was no gun in the house, leads us to believe that the defendant was the only person involved in this that had a firearm.

Your Honor, the pathologist's report in this case indicates that the victim suffered the following injuries: One, a fatal penetrating gunshot wound of the head which lacerated the brain, and two, potentially fatal perforating wound of the right arm which re-enters the chest causing a penetrating gunshot wound of the chest, abdomen, and lacerates the right lung and liver.

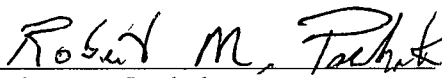
She also had sharp-force injuries listed as an incised wound over the left shoulder blade, puncture wounds of the face, incised wound of the right cheek, and blunt force injuries --

(Tr. p. 13, line 11- p. 20, line 12)

As can be seen from the above, there was an insufficient factual basis to accept appellant's guilty plea.

CONCLUSION

Appellant's guilty plea should be vacated.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of July, 2017.

STATE OF SOUTH CAROLINA

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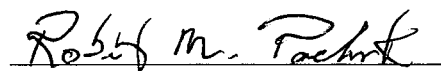
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Todd Virgil Brown states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Doyet A. Early, which was held on January 5, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Todd Virgil Brown.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 14th day of July, 2017.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Guilty Plea transcript dated January 5, 2016
- (2) Motion to Reconsider the Sentence filed January 6, 2016
- (3) Order denying motion filed November 29, 2016
- (4) True billed Indictment: 2015-GS-02-00716

I certify that this designation contains no matter which is irrelevant to this appeal.

July 14, 2017



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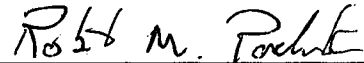
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CERTIFICATE OF COUNSEL

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."

July 14, 2017.



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