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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2016-002367

Cedric L. Woods#265789,.....Appellant.

v.

State of South Carolina,.....Respondent.

AMICUS CURIAE BRIEF (CONDITIONALLY SUBMITTED)

This Amicus Curiae Brief is conditionally submitted per Rule 213 SCACR, along with a Motion for Leave to file, and in support of the above captioned Appellant, Cedric L. Woods. It is respectfully submitted by Randall Smith, a fellow inmate of Woods.

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Statues

This author, Randall Smith, #312339 (hereafter Smith,) respectfully comes before this Court and conditionally submits this Amicus Brief with a Motion for Leave to File, per Rule 213, SCACR, and in support of Cedric L. Woods, # 265789, Appellate Case No. 2016-002367.

Reasons for this Brief

Smith, a fellow inmate of Woods at Allendale Correctional Institute (ACI), submits this brief with the hope of furthering justice and clarifying points of law that are not articulated as well as they should have been in Woods' brief. Woods and Smith have studied together because Woods is nearly blind from a stroke he suffered three years ago. In the five years that Smith has known him, Woods has always insist that he is innocent.

SCDC law libraries are antediluvian and the SE2d books stop at volume 568, or February, 2003. Subsequently, they did not have a printed copy of St v Gentry, 610 SE2d 494, or Evans v St. 611 SE2d 510, (2005), which were needed for them to analyse and digest. As a result of this hindrance, they had failed to see the less than obvious fact that Evans applied Gentry's holding reguarding subject matter jurisdiction (hereafter smj), to illegal grand juries and indictments that are nullities, and that in order to preserve such an issue for appellate review, it must be raised and ruled upon below.

With only one day a week to access the prison's sad law library, and for only two - 2 to 3 hour periods on that day, added to that fact, any case more recent than 2003 has to be read on one of two old computers with Westlaw Online, and for only a one hour per period, they were focused on the case's head notes, of which there are 27.

Most of these head notes are deceptively suggestive that they supported Woods' assertions. The aspect of appellate preservation in the case's

opinion section, while not totally obscure, it is not readily apparent to the average inmate unskilled in the law, or prison law library clerks that are still insisting that trial courts do not have smj without a valid indictment, and of course they are wrong.

Herein, Smith hopes to better articulate what Woods, with Smith's help, tried to express; that his indictments were fraudulent and per Evans, were nullities, and even though the trial court had smj, the indictments were not valid and the trial court was then in "excess of its jurisdiction."

As to the issue of preservation of his claims, which the State has challenged, fraud upon the court, Rule 60(b)(3), SCRCP, has no statue of limitations. Additionally, excess of jurisdiction, like smj, "because it involves the court's power to hear a case, can never be forfeited or waived. Consequently, defects in [excess of jurisdictions] require correction regardless of whether the error was raised [below]." Stv Gentry, quoting from U.S. v Cotton, 122 SCt at 1785.

Facts of the Case

Woods was arrested and indicted for kidnapping, CSC, burglary first, armed robbery, and weapons counts on each charge, (8 total). He was convicted of kidnapping, Abhan, (lesser included of the CSC charge), burglary first, and armed robbery dispite being acquitted of all four weapons charges. The weapons charge was the sole aggravating element on the burglary first indictment and sans a weapon, a necessary element of bath charges, he could not be guilty of either crime. This was a "red herring" in of itself.

These two convictions without a weapon were not contested by his trial counsel before the judge passed sentence. The fact that the jury did not believe a weapon existed, which was a necessary element in those two charges, means that the State did not meet the Winship burden of proof on every element of the charged crimes.

Woods was never served with any of his indictments prior to trial and these eight indictments themselves show prima facia evidence of fraud right on their faces. They are dated four and ten days prior to the supposed terms of court which are also in conflict with the statutory terms of court set forth in §14-5-630(1).

Argument

The jurisdictional interpretation in Evans ignored well-established principles of constitutional and statutory construction that affects fundamental rights embodied in the Due Process Clause. Excesses of jurisdiction violate the fundamental right to fairness, therefore they are unconstitutional and require correction. They are repugnant to the reputation and integrity of our judicial system.

The ruling in Evans allows Solicitors in this State to all but ignore indictment processes without any worry about the consequences of due process violations. This allows and even condones abuse of government power. A defendant has no recourse if his lawyer does not challenge his indictment at trial. Even if an illegally obtained indictment is quashed at trial, the Solicitor only has to convene a legal grand jury and start over, he has nothing to fear if he violates someone's fundamental rights.

This is the kind of un-checked power that leads to abuse; something our Founding Fathers sought to prevent and indictments were one of the means they intended to protect us all; that we cannot be hauled into court without just cause.

Except for the aspect of issue preservation, Evans supports Woods' claims that his indictments were nullities and that they would fail to give the required notice demanded by due process and our Constitutions. The dates of return being four and ten days prior to the supposed terms of court that are in conflict with statue

certainly lends credibility to Woods' claim of fraud. This is extrinsic fraud upon the Court and has no statue of limitations and thus Woods claim is preserved by rule of law.

This prima facia evidence is also enough to rebut the presumption of regularity. See Evans citing St v Griffin, 285 SE2d 631 (1981).

Woods also raises the issue of "excess of jurisdiction" instead of smj. Excess of jurisdiction, like smj, is about the court's power and authority to hear a particular case, and if the conditions which authorize that power are absent or wanting, the trial court is in excess of its jurisdiction and its power to act is not lawfully invoked. Because it involves the court's power to act or hear a case, just as does smj, it can never be forfeited or waived, even with the consent of both parties.

As such, the issue of jurisdiction, the "excess" of jurisdiction, preserves Woods' claims that the indictments were nullities, and because valid indictments, properly served, are a Condition precedent to a criminal trial, the criminal trial court, even though it had smj to hear the case, it was in excess of its jurisdiction and its power to act was not lawfully invoked.

"By 'excess of jurisdiction' as distinguished from the entire absence of jurisdiction, we understand and mean that the act, though within the general power of the judge, is not authorized, and therefore void, with respect to the particular case, because the conditions which alone authorize the exercise of his general power in that particular case are wanting, and hence, the judicial power is not in fact lawfully invoked." Broom v Douglass, 175 Ala. 268, 57 So. 860, Alabama Supreme Court, (1912)

Excess of jurisdiction is by far, not a novel concept nor a recent invention. It dates back to 1872 in the U.S. Supreme Court with Bradley v Fisher, 13 Wall 335, 80 U.S. 335. This case was

basically a legal feud between Bradley, who was John Surrat's trial counsel in his trial for the murder of President Lincoln, and Judge Fisher, the presiding trial judge. This case was cited in Stump v. Sparkman, 98 SCt 1099, (1978), for its explanation and example of the term - "excess of jurisdiction."

Gentry, Evans and their progeny in the 13 years since, all support the fact that an indictment is required. "The law requires the presentation of a grand jury as a condition precedent to the trial of a crime...." St v Beachum, 342 SE2d 597, (1986), citing S.C. Const. art 1, §11. Per Evans, if this condition of a valid indictment is absent or if the indictment were a nullity, it would be as if none ever existed. The trial court would be in excess of its jurisdiction and Contrary to Evans, because this involves a court's power to hear a case, it can never be forfeited or waived, just like smj.

Additionally, the condition of a properly served valid indictment is not only required by due process, but because it is a provision of our Constitution, art 1, § 23, states that the provisions of the Constitution are mandatory — without exception.

Waiver of a Valid Indictment

"We the People..., in order to form a more perfect Union, establish Justice,... and Secure the Blessings of Liberty...." Few inmates in S.C. prisons, all of whom were defendants, would recognize these words as belonging to the Bill of Rights. Fewer still would know the attendant procedures for impaneling a legal grand jury or for the return of a valid indictment. They inherently trust our legal system to maintain its integrity, that it will live up to its reputation; one of justice for all. How then can he give informed consent to waive a right that he does not know he is waiving?

Fundamental rights are meaningless to an accused if his ignorant failure to claim his rights removed any of the protections that they were intended to serve. Our Founding Fathers would find this holding in Evans abhorant and repugnant to the ideals they sought to defend and instill in our laws and our Constitution. Evans does not provide for, nor does it even address informed consent to waiver of the right to notice. (Above is a paraphrase from Johnson v Zerbst, below.)

Justice Pleicones addressed this in his dissent in Gentry and he took no part in the Evans decision. He pointed out that of the three functions an indictment serves, the first two are for the benefit of the accused and can be waived. But the third function is for the benefit of the court, to pass judgment and is not subject to waiver. Neither Gentry or Evans addressed the Solicitor's failure to even serve the indictments as it was in Woods' case. Notice that the copies he has submitted to this Court were not clock stamped by the Aiken Clerk of Court; — Another red flag against the State.

"Courts indulge every presumption against waiver of fundamental rights and do not presume acquiescence in the loss of fundamental rights" Johnson v Zerbst, 58 SCt 1019 (1938). "A waiver is the intentional relinquishment or abandonment of a known right or privilege." "Waiver is different from forfeiture. Whether a particular right is waivable; whether the defendant must participate personally in the waiver; whether certain procedures are required; and whether the defendant's choice must be informed or voluntary, all depends on the right at stake." U.S. v Olano, 113 SCt 1770 (1993).

More recently, "A 'waived' claim or defense is one that a party has knowingly and intelligently relinquished." Wood v Milyard, 132 SCt 1826 (2012). Simply put, Woods could not have known that he was waiving his right to notice. Since he was never served with a copy of the indictments he could not have noticed the discrepencies in dates and terms of court and apparently neither did his lawyer or the trial judge.

The holding in Evans is better discribed as forfeiture, rather than waiver. "As the Government notes, 'the issue in this case is more accurately described as one of forfeiture rather than waiver,' although jurist often use the words interchangeably, 'forfeiture is the failure to make the timely assertion of a right; waiver is the intentional relinquishment or abandonment of a known right.'" Kontrick v Ryan, 124 SCt. 906, (2004) (footnote 13).

Other Factors to Consider

It appears to both Woods and Smith that several Solicitors from different circuits are guilty of convening grand juries illegally and with Evans covering their backs, this is likely to spread. Public defenders, (or as commonly referred to by inmates as "public pretenders"), are careless at best, when it comes to protecting the rights of those they have been appointed to represent. For instance; when is the last time you have seen or heard of a p.d. filing a § 17-23-90 petition ~~when their client is still in jail after two terms of court have past~~ without an indictment?

If allowed, these Solicitors will become criminally negligent of defendant's rights with impunity. No one should be allowed to break laws to enforce laws. Evans does not provide for informed consent and any waiver of a fundamental right is not to be presumed. The element of knowledge of a waiver or forfeiture is fundamental. Evans is regressive; it is not compatible with "the evolving standards of decency that mark the progress of a maturing society." It diminishes our rights and fails to protect them. Trop v Dulles, 78 SCt 590, (1958).* (Invaluable (through) rights.)

Only those in better financial situations that do not have to depend on appointed counsel and can afford a private lawyer, will have their rights

* While this quote was extended to the Eighth Amendment, it should also apply to other fundamental rights.

protected. While this is not a total violation of equal protection, it can become invidious discrimination if prosecutors are not held in check.

The U.S. Supreme Court also held 135 years ago that, "[t]here are cases... in which the objection to the grand jury may be taken at any time. These are where the whole proceeding of forming the panel is void; as where the jury is not the jury of the court or term in which the indictment is found...." U.S. v Gale, 3 SCt 1, (1883). This fits Woods' case.

Indictments returned four and ten days prior to the terms of court certainly fits and the court of common pleas was mandated for the supposed terms of court on the indictment's faces. As such, it was "not the jury of the court or term in which the indictment[s were] found." Gale is "clearly established federal law" as decided by the U.S. Supreme Court.

Neither Woods or Smith have found a U.S. Supreme Court case that has expanded Cotton's holdings to such an extent as has Evans.

Conclusion

Prima facia evidence of fraud exist right on the faces of all eight indictments returned against Woods. The dates are four and ten days prior to the supposed terms of court that are themselves in conflict with the statutory terms of court. This is obviously extrinsic fraud and there is no statue of limitation on such. This fraud preserves this issue for this Courts review and action.

Additionally, this makes the indictments a nullity and void which further put the trial court in excess of its jurisdiction because the required condition that a defendant be properly served with a valid indictment prior to the commencement of trial was wanting and hence, the trial court's authority and power to act was not in fact

lawfully invoked. Since excesses of jurisdiction involve the power of a court to act in a particular case, and can never be forfeited or waived, and consequently, such errors require correction regardless of whether or not they were raised in the trial court.

Subsequently, there are two valid reasons to vacate Woods' sentences and convictions; fraudulent indictments and the excess of the trial court's jurisdiction.

The holding in Evans that any objection to the legality of the grand jury or the indictments returned must be raised before the petit jury verdict at trial, is repugnant to statutory and constitutional laws of this State and these United States. Few inmates in this State's prisons could recognize the Bill of Rights. Fewer still would know the legal procedures involved in the indictment process, one of the most fundamental of rights, and their ignorant failure to claim those rights should not remove their protections.

The accused person has to trust the integrity and reputation of our legal system to be fair and to be uncorrupted. Left to their own devices, our State's Solicitors cannot be counted on to be fair and be uncorruptable without the checks and balances our Constitutions provide, as is evidenced in Woods' indictment dates. His lawyer and the trial court failed to question these discrepancies as nothing is noted in the record.

Smith, for the above stated reasons, respectfully urges this Court to do what he sees as the right thing to do, and vacate Woods' sentences and convictions, and reverse the aspect of Evans that requires a challenge to the legality of grand juries or the indictments returned prior to the jury verdict in a criminal trial and declare that aspect unconstitutional.

Respectfully submitted,

Randall Smith

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PROOF OF SERVICE

I Randall Smith, #312339, do hereby certify that on this the 27th day of November 2018, I have served copies of my Motion for Leave to file Amicus Curiae Brief and my Amicus Curiae Brief Conditionally Submitted to the S.C. Attorney General's Office and the S.C. Court of Appeals, by placing these copies in the USPS mail at Allendale Correctional Institution.

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