

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Robert E. Hood, Circuit Court Judge  
\_\_\_\_\_

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MAR 05 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARY WAYNE PRESLEY,

APPELLANT

APPELLATE CASE NO. 2013-002475  
\_\_\_\_\_

FINAL BRIEF OF APPELLANT  
\_\_\_\_\_

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting State's Exhibit No. 6 into evidence over objection because it was an order of the South Carolina Supreme Court that found the filings by appellant were a sham legal process as defined by S.C. Code § 16-17-735(D), which was the ultimate issue the jury was to rule on?

## STATEMENT OF THE CASE

Appellant was convicted of falsely asserting authority of law and conspiracy to do the same after a jury trial held before the Honorable Robert E. Hood on November 12 – 14, 2013, in Richland County. He was sentenced to three (3) years suspended to then thirty (30) months time served on each charge. Benjamin Stitely, Esquire, represented appellant. Joshua Underwood, Esquire, and Brian Petrano, Esquire, represented the State.

This appeal follows.

## ARGUMENT

The trial court erred in admitting State's Exhibit No. 6 into evidence over objection because it was an order of the South Carolina Supreme Court that found the filings by appellant were a sham legal process as defined by S.C. Code § 16-17-735(D), which was the ultimate issue the jury was to rule on.

The indictment charging appellant with falsely asserting authority of law alleged the following:

That in Richland County, on or about June 2, 2010, Gary Wayne Presley (A/K/A "Gary Wayne"), did willfully and unlawfully assert authority of law in an attempt to intimidate and/or hinder a state or local official or employee in the discharge of their official duties by means of threats, harassment, or use of a sham legal process.

To wit: The defendant issued, delivered, distributed, filed, or caused to be issued, delivered, distributed, or filed documents that were not lawfully issued and purported to be from and on behalf of the "Central Assemblies Union of Several States" with the South Carolina Court of Appeals in an effort to intimidate, harass, threaten and/or hinder the courts of South Carolina in the discharge of their official duties.

This is in direct violation of Section 16-17-735(D) of the South Carolina Code of Laws (1976), as amended. (emphasis supplied). The indictment charging him with conspiracy alleged that he conspired with one or more persons to unlawfully assert the authority of law by use of a sham legal process. (emphasis supplied).

S. C. Code § 16-17-735(D) under which appellant was indicted on the substantive charge provides the following:

(D) It is unlawful for a person falsely to assert authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of a sham legal process. A person violating this subsection is guilty of a felony.

(3) “Sham legal process” means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to:

- (a) be a summons, subpoena, judgment, lien, arrest warrant, search warrant, or other order of a court of this State, a law enforcement officer, or a legislative, executive, or administrative agency established by state law;
- (b) assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers or privileges of a person or property; or
- (c) require or authorize the search, seizure, indictment, arrest, trial, or sentencing of a person or property.

(emphasis supplied)

The solicitor’s theory of this case was that appellant filed documents in a foreclosure action in South Carolina. Appellant filed these documents in the appellate courts. The documents were designed and drafted to appear as official legal documents and claimed appellant and his coconspirators represented the real government and the South Carolina courts should stop the foreclosure. (R. p. 2, line 17 – p. 3, line 14).

Daniel Shearouse, Clerk of the South Carolina Supreme Court, testified for the State. During his testimony, the State sought to introduce State’s Exhibit No. 6, which was a 12-page order of the South Carolina Supreme Court dated September 24, 2010, dealing with four cases involving mortgage foreclosures in Spartanburg County. The Court stated it “must determine if certain documents filed in these matters should be stricken from the record.” (R. 200). The order of the Court concluded with the following language:

By their format, language, and use of seals and titles such as judge, justice and judicial scribe, these documents are intended to create the belief in the reader that they are being issued by a court authorized to exercise judicial power and authority. This is misleading and false since the Central

Assemblies is not a court of any state of the United States or of the Federal Government. Further, it is clear that the purpose of these documents is to prevent or impede the courts of the State from proceeding with these legal actions.

We find that all of these filing from the Central Assemblies are sham legal process as defined by both S.C. Code Ann. § 16-17-735 (2003) and S.C. Code Ann. § 30-9-30 (2007), and they have no force and effect. Accordingly, these documents are hereby stricken from the record in the above cases. (emphasis supplied). (R 207).

Defense counsel objected to this exhibit because it was providing a legal conclusion to the very issue that the jury was to determine. (R. p. 23, lines 15 – 22). The trial court admitted the exhibit over objection. (R. p. 27, lines 19 – 25). That ruling was in error.

In Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002), the Court held that a defendant was not entitled to present expert testimony at a post-conviction relief hearing.

The Court reasoned as follows:

The expert offered no factual evidence. He proffered his opinion, assuming certain facts, trial counsel's action fell below acceptable legal standards of competence. The testimony was not designed to assist PCR court to understand certain facts, but rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel's actions fell below an acceptable legal standard of competence. Such "testimony" falls outside of Rule 702, SCRE.

In Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003), the Court held that an affidavit of a shareholder's expert could not be part of the summary judgment record as the overwhelming majority of it consisted of legal argument as to why summary judgment should be denied. The Court stated that expert testimony on issues of law was inadmissible.

Citing:

*See, generally* Note, *Expert Legal Testimony*, 97 Harv.L. Rev. 797, 797 (1984); *see also* *Askanase v. Fatjo*, 130 F.3d 657, 673 (5<sup>th</sup> Cir. 1997) (where the court disallowed a legal expert's opinion on whether corporate officers and directors breached their fiduciary duties because "[s]uch testimony is a legal opinion and inadmissible."); *United States v. Sinclair*, 74 F.3d 753, 758

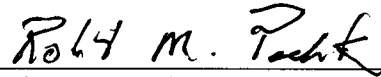
704 prohibit experts from offering opinions about legal issues that will determine the outcome of a case.)

In appellant's case, the highest appellate court of this State issued an order concerning appellant and concluded with a legal opinion that his filings were a sham legal process which was the precise issue for which appellant was being tried and for which the jury was to determine. The prejudice in this case is obvious as "there is a reasonable probability the jury's verdict was influenced by the wrongly admitted...evidence." Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005). The solicitor in this case even read to the jury the part of the Court's order calling appellant's filings a sham legal process. (R. p. 34, line 18 – p. 36, line 14).

CONCLUSION

Appellant's convictions should be reversed.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March 2015.

CERTIFICATE OF COUNSEL

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."

March 5, 2015

*Robert M. Pachak*

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of March 2015.

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
This 5th day of March 2015.

*Buddy Robinson Brown* (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.