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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2013-002475

THE STATE,

Respondent,

v.

GARY WAYNE PRESLEY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

Post Office Box 192
Columbia, SC 29202
(803) 576-1800

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly admitted an order from the South Carolina Supreme Court into evidence because although it found the filings in question met the definition of a sham legal process, whether the documents were indeed a sham legal process was only a portion of the charge against Appellant and was not the ultimate legal issue the jury had to determine, and the trial court properly charged the jury on its duty to decide Appellant's guilt.

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Appellant for falsely asserting authority of law and criminal conspiracy. (R. 193-96) On November 12-14, 2013, Appellant proceeded to a bench trial before the Honorable Robert E. Hood. Benjamin Stitely, Esquire, represented Appellant, and Assistant Attorneys General Joshua R. Underwood and Brian Petrano represented the State. Judge Hood found Appellant guilty of both charges and sentenced him to three years' imprisonment on each, to be served concurrently. However, he "suspended" the sentences upon the thirty months' time Appellant had already served. (R. 192, lines 1-6.)

On November 18, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

Appellant is a member of the Central Assemblies Union, which he describes as an assembly of Christian men and women operating under Christian common law and supporting the Constitution. (R. 138, line 18-R. 139, line 1.) He was elected a minister of justice or judge in the Central Assemblies Union. (R. 140, lines 15-25.) He was approached by Geary Thomas Dooly, a fellow Assemblies Union member, regarding a problem Dooly had with several banks. (R. 141, lines 8-14.) Appellant filed documents with the South Carolina Court of Appeals regarding Dooly's foreclosure issues, in which he notified the Court the Assemblies Union court was acquiring jurisdiction over the cases. (R. 165, lines 7-25.) Consequently, he was arrested and charged with falsely asserting authority of law and criminal conspiracy. (R. 100, lines 23-25; R. 193-96)

At trial, the State called Daniel Shearouse, the clerk of the South Carolina Supreme Court. (R. 8, lines 6-14.) He testified regarding the cases filed by Appellant in the Court of Appeals, which had been transferred to the Supreme Court. (R. 13, lines 11-15.) The State introduced numerous exhibits, including State's Exhibit 6, which was an order of the Supreme Court regarding some documents signed by Appellant and filed on behalf of Dooly. (R. 22, lines 13-25.) Among other exhibits, Appellant objected to State's 6 coming in, arguing first that it was hearsay because the author of the document was not present. (R. 23, lines 5-6.) The trial judge pointed out that the clerk of the Supreme Court was there to testify to it. (R. 23, line 11.) Appellant then objected on the basis that the order calls for a legal conclusion. (R. 23, lines 15-22.) The trial judge deemed State's 6 admissible over objection based on his finding that it was a certified copy of a public record, the appropriate custodian of records testified, and it had the appropriate seal on it. (R. 27, lines 19-25.) The State then brought up the second part of

Appellant's objection to State's 6 regarding it being an issue for the trier of fact. (R. 29, lines 8-12.) The trial judge found State's 6 goes directly to the element of the crime involving intimidating, harassing, threatening and/or hindering the courts and determined the order is directly probative to an element of the crime without being outweighed by any prejudicial effect. (R. 29, line 22-R. 30, line 4.) The trial judge admitted the exhibit.

Ultimately, the jury found Appellant guilty on both counts, and the trial judge sentenced him to three years' imprisonment on each, to be served concurrently. However, he "suspended" the sentences upon the thirty months' time Appellant had already served. (R. 192, lines 1-6.)

ARGUMENT

The trial court properly admitted an order from the South Carolina Supreme Court into evidence because although it found the filings in question met the definition of a sham legal process, whether the documents were indeed a sham legal process was only a portion of the charge against Appellant and was not the ultimate legal issue the jury had to determine, and the trial court properly charged the jury on its duty to decide Appellant's guilt.

Appellant argues the trial court erred in admitting State's Exhibit No. 6 (State's 6) into evidence because it was an order of the South Carolina Supreme Court that found the filings regarding Geary Thomas Dooly were a sham legal process, which was the ultimate issue the jury was to rule on. On the contrary, the trial court correctly found State's 6 went directly to the element of the crime involving intimidating, harassing, threatening and/or hindering the courts and determined the order's probative value was not outweighed by its prejudicial effect. Thus, this Court should affirm the trial court's ruling.

"The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Cope, 405 S.C. 317, 334-35, 748 S.E.2d 194, 203 (2013). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE;

State v. Aleksey, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000). The determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case. State v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000). Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision made on an improper basis, such as an emotional one. State v. Saltz, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001).

The Rules of Evidence provide: "Testimony in the form of an opinion or inference **otherwise admissible** is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE (emphasis added).

Appellant cites two cases to support his argument, both of which are inapplicable to this situation. The cases involve expert witnesses testifying regarding legal issues. Here, the item of evidence Appellant is arguing was admitted in error is a court order, not expert witness testimony. It merely concludes the documents have no force and effect because they meet the definition of a sham legal process. The order makes no conclusion and offers no opinion on whether Appellant was using a sham legal process beyond a reasonable doubt. In Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002), the Supreme Court affirmed the post-conviction relief court's decision to keep out an expert's opinion on whether trial counsel's performance was deficient, finding it was legal argument instead of testimony designed to assist the trier of fact. Specifically, the Court found it fell outside Rule 702, SCRE.

Similarly in Dawkins v. Fields, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003), the Supreme Court held the trial court properly refused to consider an expert's affidavit because it "primarily contained **legal** arguments and conclusions." The Court noted: "While it is true that 'an opinion . . . is not objectionable because it embraces an ultimate

issue to be decided by the trier of fact,' [the expert]'s affidavit inappropriately attempted to usurp the trial court's role in determining whether petitioners were entitled to summary judgment." Id. (quoting Rule 704, SCRE).

Here, a court order is the subject, not an expert affidavit. Further, the order is not an opinion containing primarily legal arguments and conclusions. Rather, it is a court order that finds the filings meet the definition of a sham legal process. There are no arguments or opinions contained within the order. Additionally, the role of a court order when admitted into evidence is not the same as the role of an expert: to assist the trier of fact to understand certain facts. The court order was introduced by the State to prove that harm was done and what effect it had on the court system. Specifically, the State argued the order showed identity and intent. (R. 25, lines 9-10.) Thus, it was relevant. When the trial judge admitted State's 6, he admitted it under Rule 902, SCRE, finding it was "a certified copy of a public record under subsection number four, that the appropriate custodian of record[s] is here to testify, and that it has the appropriate seal on it." (R. 27, lines 21-24.) Thus, the exhibit was not even admitted under Rule 702.

When ruling on the second part of Appellant's argument regarding State's 6, the trial court noted the exhibit was used to prove the elements of the crimes. As to conspiracy, the State had to show there was some form of agreement with somebody else, and as to asserting false authority, the State had to prove there was some level of intimidating, harassing, threatening and/or hindering the courts. The trial judge stated, "I believe that court order goes directly—which is State's Exhibit Number 6—goes directly to that element of the crime." (R. 29, line 24-R. 30, line 1.)

> 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.

S.C. Code Ann. § 16-17-735(D) (2003).

To determine whether Appellant was guilty of the crimes charged, the jury was tasked with deciding if he falsely asserted authority of law in an attempt to intimidate or hinder a state or local official or employee in the discharge of official duties by means of threats, harassment, physical abuse, or use of a sham legal process and/or conspired to do so. While use of a sham legal process is certainly part of the statute, it is just one means by which Appellant could have committed the crimes. First, the jury had to find he falsely asserted authority of law in an attempt to intimidate or hinder based on the language of the statute. The complained-of language in State's 6 regarding "sham legal process" did not reach a legal conclusion as to whether Appellant "falsely asserted authority." Additionally, the appellant referred to in the order is Geary Thomas Dooly, not Appellant. While Appellant is mentioned in the order as the "Public Minister of Justice" who signed the documents, the order and its finding of sham legal process related to Geary Thomas Dooly, not Appellant. Thus, no legal conclusion was made in the order pertaining to Appellant that would usurp the power of the jury to make its own determination regarding his guilt. The jury was certainly not put in a position where it was required to find Appellant guilty simply because State's 6 contained language referring to the documents as sham legal process. Rather, the jury was left to put together all pieces of evidence, including the order and Appellant's testimony, to make its own determination and reach its ultimate conclusion that Appellant was guilty.

Even after State's 6 was admitted, the jury knew it was ultimately up to it to decide whether a sham legal process had taken place. In his closing statement, the

Assistant Attorney General asked the jury, "First, did [Appellant] send this packet of documents to the South Carolina Court of Appeals? Second, **is it sham legal process**, the documents in that packet? And, third, is [Appellant] guilty? That's really the three questions you have to consider when you boil it down." (R. 170, lines 16-21.) (emphasis added.) He then took the time to explain what sham legal process is, which undoubtedly indicates this is a question for the jury's determination. (R. 171, lines 7-12.) Later, the trial judge charged the jury on sham legal process, defining it and then telling the jury, "You have to separately decide whether he is guilty or not guilty of the second charge, falsely asserting authority of law." (R. 190, lines 14-16.) This statement shows three things: (1) it is up to the jury to decide whether Appellant is guilty of the crime, (2) no one else, including the Supreme Court, has already decided Appellant is guilty of the crime, and (3) the crux of the charge is the act of "falsely asserting authority of law," not the sham legal process.

Because State's 6 went directly to an element of the crime without usurping the jury of its role in determining whether Appellant committed the crime by stating a legal conclusion, it was properly admitted. Therefore, the trial court should be affirmed.

CONCLUSION

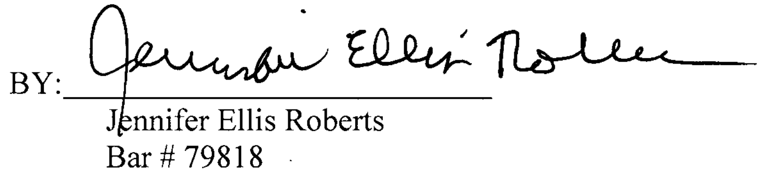
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit



BY:____________________________

Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 6, 2015

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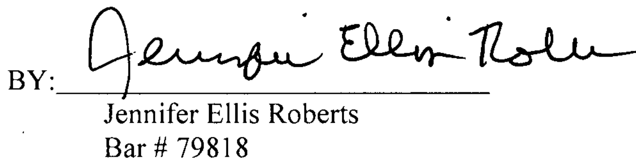
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit



BY:______________________________
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 6th day of March, 2015.

ANGELA BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 292[illegible]
(803) 734-3727

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