THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

HON. ALISON R. LEE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2020-000741

BILLY WAYNE MCINTOSH . . . . . APPELLATE

V

STATE OF SOUTH CAROLINA . . . . . RESPONDENT

INITIAL BRIEF

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RESPONDENTS

TABLE OF CONTENTS

AUTHORITIES

CASES

AKE V OKLAHOMA, 470 U.S. 68

DOUGLAS V STATE, 83 S.Ct. 814

EX PARTE LEXINGTON COUNTY, 442 SE2d 589

LYLE, 125 SC 416

STATE V BECK, 342 SC 129

STATE V CHEESEBORO, 346 SC 526

STATE V LANGFORD, 460 SC 421

STATE V WEAVERLING, 377 SC 460

SANDSTORM V MONTANA, 99 S.Ct. 2450, 2459

STATE V THOMPSON, 415 SC 560

YATES V EVATT, 500 U.S. 391

DUNCAN V LOUSIANA, 391 U.S. 145; 88 S.Ct 1444, 1450

SECONDARY SOURCES

USCA CONST. AMED. 5, 14

73 AMER. JURIS. 2d STATUTES § 166

CJS STATUTES § 585

STATUTES

SC CODE 23-3-430, SECTION - C(15)

STATEMENT OF CASE

APPELLATE WAS CONVICTED OF KIDNAPPING AND MURDER IN LEXINGTON COUNTY SEPTEMBER 1977, AND FILED A MOTION FOR DECLARATORY JUDGEMENT JULY 26, 2018. PURSUANT TO THOMPSON V STATE, 415 SC 560. ASKING THE COURT FOR A RULING ON WHETHER OR NOT THE KIDNAPPING CONVICTION INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE; BECAUSE THE SEXOFFENDER CLASSIFICATION SUBJECTS HIM TO A MORE ONEROUS PAROLE PROCESS VIA THE PAROLE ADVISORY ASSESSMENT/RISK ASSESSMENT CRITERIA WHICH RATES SEXOFFENDERS AT A HIGH RISK OF RE-OFFENDING. THE COURT RULED THAT PLAINTIFF FAILED TO PROVE THAT HE DID NOT COMMIT A SEX OFFENSE OR AN ATTEMPTED SEX OFFENSE ON THE VICTIM.

ISSUES ON APPEAL

1) DOES RETROSPECTIVE APPLICATION OF SC CODE 23-3-430, SECTION C(5) DENY APPELLATE EQUAL PROTECTION AND DUE PROCESS OF LAW?

2) DID ADMISSION OF FALSE ALLEGATION OF KIDNAPPING AND RAPE IN AN UNRELATED CASE DENY APPELLATE A FAIR TRIAL?

3) DID APPELLATE'S KIDNAPPING CONVICTION INCLUDE A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE? MUST THE COURT FIND EVIDENCE OF INTENT?

QUESTION #1

DOES RETROSPECTIVE APPLICATION OF SC 27-3-430, SECTION-C (1) (5) DENY APPELLATE EQUAL PROTECTION AND DUE PROCESS OF LAW?

WHEN THE TRIAL COURT MAKES THE DETERMINATION WHETHER OR NOT A KIDNAPPING OFFENSE INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE. THE DEFENDANT HAS THE BENEFIT OF THE SUPERIOR POSITION OF THE TRIAL COURT TO JUDGE THE CHARACTER OF A WITNESS AND THE WEIGHT OF THE EVIDENCE, TRIAL COUNSEL TO CHALLENGE ANY EVIDENCE THAT HAS SEXUAL CONNOTATIONS, AND APPELLATE COUNSEL TO APPEAL AN ADVERSE RULING BY THE COURT. HOWEVER. APPELLATE HAD TO STAND ALONE BEFORE THE COURT (42) YEARS AFTER THE DATE OF THE OFFENSE WITHOUT THE TRIAL TRANSCRIPT, AN INDIGENT, INEXPERIENCED, PRO SE' LITIGANT, UNABLE TO CONDUCT AN INVESTIGATION, LOCATE AND SUBPEONA WITNESSES, PRESENT PROFESSIONAL WITNESSES NOR DO ANY OTHER THING TO CHALLENGE THE STATE'S CASE IN CHIEF TO MEET OR REBUTT THE PRESUMPTION THAT THE KIDNAPPING INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE. THE RESPONDENT (STATE) CONTROLS THE EVIDENCE AND DID NOT GIVE APPELLATE ANY EVIDENCE EXCEPT WHAT SUPPORTS RESPONDENT'S POSITION, AND STATE LAW PROHIBITS INMATES FROM UTILIZING THE FREEDOM OF INFORMATION ACT.

EQUAL PROTECTION OF LAW

A STATE CAN, CONSISTENTLY WITH THE 14TH AMEND. PROVIDE FOR DIFFERENCES SO LONG AS THE RESULT DOES NOT DENY DUE PROCESS OF LAW OR AMOUNT TO AN INVIDIOUS DISCRIMINATION. DOUGLAS V STATE, 83 S.Ct. 814. ANYTIME CRIMINAL PROCEDURES DISCRIMINATE AGAINST DEFENDANTS BY REASON OF THEIR INDIGENT STATUS, SUCH PROCEDURES VIOLATE EQUAL PROTECTION OF LAW. WHERE AN INDIGENT DEFENDANT IS SUBJECTED TO A PROCESS THAT IS REQUIRED OF A INDIGENT DEFENDANT AND NOT A NON-INDIGENT DEFENDANT, THEN THE PROCESS BECOMES INVIDIOUSLY DISCRIMINATORY AND VIOLATIVE

OF EQUAL PROTECTION OF LAW, EX PARTE LEXINGTON COUNTY, 442 SE2d 589.

AN INTENT TO DISCRIMINATE UNJUSTLY BETWEEN DIFFERENT CASES OF THE SAME KIND IS NOT TO BE ASCRIBED TO THE LEGISLATURE. THUS, WHERE THE LEGISLATURE HAS LAID DOWN A RULE FOR ONE CLASS OF CASE, IT IS NOT TO BE READILY SUPPOSED THAT, IN THE SAME ACT, A DIFFERENT RULE HAS BEEN PRESCRIBED FOR ANOTHER CLASS OF CASES WITHIN THE SAME REASON AS THE FIRST. WHERE THE LANGUAGE OF A STATUTE IS AMBIGIOUS, THE COURTS WILL STRIVE TO AVOID A INTERPRETATION PRODUCING A SENSELESS DISTINCTION OR DISCRIMINATION, OR UNEQUAL OPERATION GENERALLY, OF A STATUTE, 73 AMER. JUR. 2d STATUTES §166. WHERE A STATUTE TAKES AWAY OR IMPAIRS VESTED RIGHTS ACQUIRED UNDER EXISTING LAW, CREATES NEW OBLIGATIONS, IMPOSES A NEW DUTY, OR ATTACHES A NEW DISABILITY, IT WILL BE CONSTRUED PROSPECTIVELY ONLY, CJS STATUTES §585. WHEN THE TRIAL COURT MAKES THE DETERMINATION WHETHER OR NOT A KIDNAPPING OFFENSE INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE, THE DEFENDANT IS PROTECTED BY THE FULL PENELOPE OF DUE PROCESS OF LAW. WHEN THE DETERMINATION IS MADE RETROSPECTIVELY BY A MOTION FOR DECLARATORY JUDGEMENT, THESE DUE PROCESS PROTECTIONS ARE STRIPED AWAY.

MINIMUM DUE PROCESS

DUE PROCESS REQUIRES (1) NOTICE (2) HEARING (3) RIGHT TO INTRODUCE EVIDENCE (4) RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES, USCA CONST. AMED. 14. THE FUNDAMENTAL REQUIREMENT OF DUE PROCESS IS THE OPPORTUNITY TO BE HEARD IN A MEANINGFUL TIME AND IN A MEANINGFUL MANNER, USCA CONST AMED. 14. TO PREVAIL ON A CLAIM OF DENIAL OF DUE PROCESS, THERE MUST BE A SHOWING OF SUBSTANTIAL PREJUDICE.

APPELLATE WAS CONVICTED OF KIDNAPPING AND MURDER (42) YEARS AGO. WITNESSES HAVE

DIED AND SURVIVING WITNESSES HAVE SURELY SUFFERED A LOSS OF MEMORY, STATE V LANGFORD, 480 SC 421. AS AN INDIGENT INMATE, APPELLATE CANNOT CONDUCT AN INVESTIGATION, LOCATE AND SUBPEONA WITNESSES, OBTAIN PROFESSIONAL WITNESSES, NOR DO ANY OTHER THING CONSISTENT WITH DUE PROCESS EXCEPT APPEAL, AND THE APPEAL PROCESS IS DILUTED AND UNRELIABLE DUE TO APPELLATE NOT BEING ABLE TO PAY FOR THE BENCH TRIAL TRANSCRIPT; THE COURT'S ORDER READS LIKE A SHUFFLED DECK OF CARDS AND HAS EXCLUDED APPELLATE'S BEST ARGUMENT THAT CO-DEFENDANT IS LYING ABOUT THE ACTUAL MURDER AND HIS ROLE IN IT, AKE V OKLAHOMA, 470 U.S. 68

THE STATE'S CONVICTION WAS DEPENDANT ON THE VICTIM BEING SHOT IN THE HEAD (3) TIMES WITH A .22 CALIBRE PISTOL. HOWEVER, THE PATHOLOGIST RULED THE CAUSE OF DEATH WAS (2) GUNSHOT WOUNDS TO THE HEAD. THERE IS UNCERTAINTY WHETHER A 3rd WOUND IS A BULLET HOLE. IF IT IS, IT IS CERTAINLY AN EXIT POINT FOR THE MISSING BULLET FROM GUNSHOT WOUND #2; (BECAUSE, THAT HOLE IS "SQUARED OFF" AT .30 X .25. ROUND BULLETS DON'T MAKE SQUARE HOLES, UNLESS THE BULLET STRIKES ANOTHER OBJECT BEFORE HITTING THE TARGET.) IF APPELLATE SHOT THE VICTIM IN THE WOODS AS KNEECE SAYS, DO YOU SUPPOSE A TREE JUMPED BETWEEN APPELLAT AND THE VICTIM, AND THE BULLET RICHOTED OFF THE TREE BEFORE HITTING THE VICTIM? NO. IF THE VICTIM WAS SHOT IN THE TRUNK, AS APPELLATE SAYS, MAYBE THE BULT RICOCHETED OFF SOMETHING THEN. YET, THAT SCENARIO WOULD PRODUCE (2) MISSING BULLETS. SO, THE THIRD HOLE, IF MADE BY A BULLET, IS AN EXIT POINT FOR PART OR ALL OF THE BULLET FROM GUNSHOT WOUND #2.

FURTHER, AND APPELLATE READ THIS PART OF THE PATHOLOGIST'S REPORT INTO THE RECORD AT THE BENCH TRIAL, THE BULLET HOLES ARE DISTINCTLY DIFFERENT IN SIZE: GUNSHOT WOUND #1 IS .28 INCHES IN DIAMETER. GUNSHOT WOUND #2 IS .35 INCHES IN DIAMETER. INVESTIGATOR MATTLOCK, WHO ATTENDED THE VICTIM'S AUTOPSY, NOTED THE SIGNIFICANCE OF THE DIFFERENT SIZE BULLET HOLES AND INTERRUPTED AGENT GRANT'S INTERROGATION OF KNEECE TO QUESTION KNEECE

ABOUT THE SECOND WEAPON (ST. EX. 6. P 5-6). THEY EVEN ASKED ABOUT THE SEQUENCE OF SHOTS FIRED TO DETERMINE IF APPELLATE COULD HAVE STOPED SHOOTING LONG ENOUGH TO CHANGE GUNS. THERE CAN BE NO DOUBT THE BALLISTIC EVIDENCE INDICATES THE VICTIM WAS SHOT WITH (2) GUNS OF A DIFFERENT CALIBRE EACH. THIS EVIDENCE WAS SURPRESSED (IGNORED) AT APPELLATE'S 1977 TRIAL, AND THE COURT IS TRYING TO SUPPRESS IT NOW. THE COURT CANNOT SAY IT WAS NOT RAISED AT THE HEARING AND IN APPELLATE'S "FINAL BRIEF" (PREPOSED ORDER), WHICH THE COURT RECEIVED PRIOR TO ISSUING ITS ORDER. THIS IS PHYSICAL EVIDENCE AND NOT DEPENDANT ON THE CREDIBILITY OF APPELLATE OR KNEECE. IT IS IRRATIONAL OF THE COURT TO IGNORE IT. FURTHERMORE, APPELLATE'S INABILITY TO OBTAIN A FORENSIC SCIENTIST AND BALLISTICS EXPERT TO PROVE THE VICTIM WAS/MOST LIKELY WAS/SHOT WITH (2) WEAPONS OF DIFFERENT CALIBRE IS PREJUDICIAL AND DENIES APPELLATE EQUAL PROTECTION AND DUE PROCESS OF LAW.

APPELLATE ALSO ARGUED KNEECE'S CREDIBILITY ON CLAIMING HE PLAYED NO ACTIVE ROLE IN THE KIDNAPPING AND MURDER. THE COURT CHOSE TO ENDORSE AND BOLSTER KNEECE'S CREDIBILITY WITH CORRODORATING STATEMENTS BY THE VICTIM'S FIANCE' GARY MULLIS AND HIS SISTER CINDY JOYNER, YET THEY ARE SUSPECTS IN THE CASE. A BETTER JUDGE OF KNEECE'S CREDIBILITY IS THE INVESTIGATORS. THEY KNEW APPELLATE LIED ABOUT EVERYTHING WITH INTENT TO TAKE ALL THE BLAME AND KNEECE WAS LYING TO AVOID ANY BLAME: MATTLOCK: HOW DID YOU KNOW WHAT HE WAS GOING TO DO? HE DIDN'T TELL YOU ANYTHING ABOUT, YOU FOLLOW ME, OR I'LL FOLLOW YOU, OR ANYTHING LIKE THAT? YOU JUST AUTOMTICALLY SLID OVER IN THE CAR SEAT AND FOLLOWED HIM? (ST. EX. 6. P3). DID YOU AT ANY TIME SEE BILLY WAYNE WITH ANOTHER WEAPON? DID YOU HAVE ANOTHER WEAPON? (EX. 6. P.5). WHAT SEQUENCE, WERE THEY RAPID FIRING OR ONE HERE, AND THEN A COUPLE SECONDS AND ANOTER ONE (EX6. P6) YOU SAY SHE WAS ASLEEP THE WHOLE TIME YOU WERE IN THE CAR? DIDN'T IT SEEM KIND OF STRANGE TO YOU THAT SHE WAS SLEEPING AFTER BEING KIDNAPPED? SHE HAN'T BEEN SHOT HAD SHE? (EX. 6. P. 6-7) IT IS RATHER IRONIC THE COURT CHOSE THE MOST INCREDIBLE LIE KNEECE

TOLD TO BOLSTER HIS CREDIBILITY: THAT THEY PARKED THE VICTIM'S CAR IN APPELLATE'S FRONT YARD, GOT OUT OF THE CARS AND HAD A CASUAL CONVERSATION ABOUT THE VICTIM BEING PREGNANT.

THE VICTIM'S ALARM CLOCK WAS SET FOR 5:12 AM. (EX.9). THE VICTIM WOULD HAVE GOTTEN DRESSED AND BRUSHED HER TEETH, USED THE BATHROOM, ETC. AT BEST, SHE LEFT HOME AT 5:25AM. IT WOULD TAKEN HER ATLEAST 6 MINUTES TO DRIVE FROM HER TRAILOR TO WHERE KNEECE SAYS SHE WAS ABDUCTED AT 5TH AND WALTON WAY. THE STAGED ACCIDENT TOOK A MINUTE OR TWO. BUT IT IS 20 MILES FROM THE POINT OF ABDUCTION TO WHERE APPELLATE'S FAMILY HOME IS AT IN AIKEN. YOU CANNOT DRIVE 60 MILES AN HOUR (EX.6.P6.L16) ALL THE WAY. SO IT HAD TO TAKE ATLEAST 25 MINUTES TO GET THERE. IT IS REASONABLE TO SAY KNEECE HAS US IN MY PARENT'S FRONT YARD AT 6AM — THE CRACK OF DAWN THAT TIME OF YEAR (FEB. 25TH). DO YOU THINK APPELLATE WOULD PARK THE VICTIM AND HERE CAR IN THE FRONT YARD AND HAVE A CASUAL CONVERSATION, WITH HIS FAMILY JUST WAKING UP? ESPECIALLY WITH APPELLATE'S BROTHER, SAMMY MCINTOSH, INSIDE THE HOUSE — THAT'S DEPUTY SAMMY MCINTOSH, AN UNDERCOVER NARCOTICS OFFICER WITH AIKEN COUNTY SHERRIFF'S DEPT. (EX.1.P1L2). KNEECE DID NOT KNOW APPELLATE'S BROTHER WAS A NARCOTICS OFFICER. THE INVESTIGATORS SURELY DID NOT BELIEVE KNEECE ON THIS POINT.

THE COURT'S ORDER CAN STAND ON ANY EVIDENCE AT ALL. APPELLATE IS ONLY TRYING TO DEMONSTRATE THAT THE OUTCOME WOULD BE DIFFERENT IF HE COULD HAVE SUBPEONAED THE FEW SURVIVING WITNESSES AND PRESENTED THE TESTIMONY OF A BALLISTICS EXPERT. WITHOUT THAT BASIC RIGHT OF CONFRONTATION, THE HEARING WAS POINTLESS. IN ESSENCE, THE RESPONDENT HANDED THE COURT ITS EVIDENCE, AND THE COURT SAID, "THIS WILL DO." THE COURT THEN DECLARED APPELLATE, "NOT A CREDIBLE WITNESS..."

QUESTION #2

DID A FALSE ALLEGATION OF KIDNAPPING AND RAPE IN AN UNRELATED CASE DENY APPELLATE A FAIR TRIAL?

STATE'S EXHIBIT #4 — SLED INCIDENT REPORT BY AGENT PAUL A. GRANT, FILED MARCH 31, 1977, ACCUSSING APPELLATE OF HOUSEBREAKING, KIDNAPPING, ASSAULT AND BATTERY WITH INTENT TO KILL, AND RAPE. THE RESPONDENT OFFERED NO OTHER DOCUMENTATION IN SUPPORT OF THIS REPORT. APPELLATE SAYS THE REPORT IS HEARSAY AND PROFFERS TWO INDICTMENTS FOR THE TRUITT CASE. THE COURT WILL NOTE THAT THE INDITMENT'S WITNESS SECTION LISTS ALL POLICE OFFICERS AND OTHER WITNESSES. AGENT GRANT'S NAME DOES NOT APPEAR ON THE LIST. HE WAS NOT INVOLVED IN THAT CASE. FURTHER, IT APPEARS THE REPORT IS MERELY AGENT GRANT REPORTING WHAT'S GOING ON WITH HIS SUSPECTS IN THE HEINIG CASE. STATE'S WITNESS CATHY SIPES IMPLICATED APPELLATE IN THAT CASE ON OR ABOUT MARCH 5, 1977 — STATE'S EXHIBIT #5.

EVIDENCE OF PRIOR CRIMES OR MISCONDUCT IS INADMISSABLE TO PROVE THE SPECIFIC CRIME CHARGED UNLESS THE EVIDENCE TENDS TO ESTABLISH (1) MOTIVE, (2) INTENT, (3) THE ABSENCE OF MISTAKE OR ACCIDENT, (4) A COMMON SCHEME OR PLAN EMBRACING THE COMMISSION OF TWO OR MORE CRIMES SO RELATED TO EACH OTHER THAT PROOF OF ONE TENDS TO ESTABLISH THE PROOF OF THE OTHER, OR (5) THE IDENTITY OF THE PERSON CHARGED WITH THE PRESENT CRIME, SEE Lyle, 125 SC @416; RULE 404(b), SCRE. TO BE ADMISSABLE, A PRIOR BAD ACT MUST FIRST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE. STATE V BECK, 342 S.C. 129 (2000); STATE V WEAVERLING, 377 SC 460, (CT APP 1999) (STATING IF PRIOR BAD ACT IS NOT THE SUBJECT OF A CONVICTION, PROOF THEREOF MUST BE BY CLEAR AND CONVINCING EVIDENCE). FURTHER, "A CLOSE DEGREE OF SIMILARITY OR CONNECTION BETWEEN THE PRIOR BAD ACT AND THE CRIME FOR WHICH THE DEFENDANT IS ON TRIAL IS REQUIRED TO SUPPORT ADMISSABILITY. UNDER THE COMMON SCHEME OR PLAN," STATE V CHEESEBORO, 346 SC 526 (2001).

THE RELEVANCY OF THIS EVIDENCE IS TO "BOLSTER THE PROBABILTY" THAT APPELLATE COMMITTED A SEX OFFENSE ON THE VICTIM. THE PREJUDICE IS OBVIOUS. THE COURT'S ORDER SAYS, "TWO MONTHS AFTER PLAINTIFF KIDNAPPED THE VICTIM, HE ABDUCTED PEGGY TRUITT FROM HER HOME, RAPED AND BEAT HER BEFORE LETTING HER GO." AND, "THE ACTIONS OF PLAINTIFF ESTABLISHES A PATTERN OF BEHAVIOR ABDUCTING WOMEN AND ASSAULTING THEM (INCLUDING RAPE)(COURT'S ORDER. P.8). ON THE BASIS OF THIS MISREPRESENTATION OF A CRUCIAL FACT, I BEG THIS COURT OF APPEALS TO CONDUCT A THOROUGH, INDEPENDANT REVIEW OF THIS CASE.

"ABUDECTED ANOTHER UN-NAMED FEMALE." STATE'S WITNESS CATHY SIPES, (EXHIBIT #5) SIPES CONCLUDED HER STATEMENT TO AGENT GRANT AND INVESTIGATOR MATTLOCK BY SAYING, "I TOOK HER TO A LOCATION AND TOLD HER MY MOTHER LIVED NEAR THERE. GOT OUT OF THE CAR AND LEFT." SHE TOOK ME HOME!

THE HEINIG MURDER OCCURED FEBRUARY 25, 1977. AND APPELLATE WAS NOT ARRESTED UNTIL THE TRUITT CASE ON MARCH 30, 1977. SO, WHY WAS APPELLATE NOT ARRESTED FOR KIDNAPING SIPES? IT'S NOT AS THOUGH SHE DID NOT KNOW WHERE I LIVED. INVESTIGATORS INTERVIEVED HER ON OR MARCH 6, 1977. SHE DID NOT CALL THE POLICE. HER ROOM-MATE TOLD CAMMILLE GRIFFIN GRAHAM THAT CATHY WAS INVOLVED IN THE CRIME WITH APPELLATE, AND GRAHAM CALLED THE POLICE. FACED WITH LOSING HER JOB AND GOING TO JAIL, CATHY SAID I FORCED HER TO ACCOMPANY ME AT GUNPOINT.

IF INVESTIGATORS WERE CONFIDENT IN SIPES ALLEGATION OF KIDNAPPING, <u>THE STATE COULD HAVE PRESSED CHARGES</u>. HOWEVER, SIPES' STATEMENT AND COURT ROOM TESTIMONY IS AN ADMISSION THAT SHE KNEW APPELLATE WAS INVOLVED IN A MURDER, THE APPROXIMATE LOCATION OF THE VICTIM'S BODY, AND THAT APPELLATE WAS LOOKING FOR KNEECE AND THE VICTIM'S CAR WITH THE INTENT TO BURN IT. KIDNAPPED OR NOT, FAILURE TO CALL POLICE, ESPECIALLY AFTER LEARNING MORE ABOUT THE CRIME THROUGH MEDIA REPORTS, MADE HER GUILTY OF ACCESSORY AFTER THE FACT. REFUSING TO PRESS CHARGES ON APPELLATE FOR KIDNAPPING WAS ACTIVE OB-

STRUCTION AND MAKES HER ALLEGATION OF KIDNAPPING SUSPECT. HOWEVER, KIDNAPPING OR NOT, SIPES DID NOT ACCUSE APPELLATE OF ASSAULTING OR MOLESTING HER. THUS, THE COURT MISCHARACTERIZED THIS EVIDENCE.

THE RELEVANCY OF THIS EVIDENCE UNDER THE "COMMON SCHEEM OR PLAN" WAS TO PAINT A BROADER PICTURE THAT "BOLSTERED THE PROBABILITY" THAT APPELLATE COMMITTED A SEX OFFENSE ON THE VICTIM. THE PRESUDICE IS OBVIOUS IN THE COURT'S ORDER. "PLAINTIFF HAD ENGAGED IN SIMILAR CONDUCT INVOLVING ANOTHER WOMAN CLOSE IN TIME TO KIDNAPPING THE VICTIM. TWO MONTHS AFTER PLAINTIFF KIDNAPPED THE VICTIM, HE ABDUCTED PEGGY TRUITT FROM HER HOME, RAPED AND BEAT BEFORE LETTING HER GO... THE ACTIONS OF PLAINTIFF ESTABLISHES A PATTERN OF BEHAVIOR ABDUCTING WOMEN AND ASSAULTING THEM (INCLUDING RAPE)." (COURT'S ORDER. P8).

CONCLUSIVELY, APPELLATE KNEW TRUITT AND SIPES. THE TRUITT CASE WAS AN ATTEMPTED ROBBERY THAT ENDED WITH HER BEING BEATTEN. THE IS NO EVIDENCE TO SUPPORT THE ALLEGATION OF KIDNAPPING AND RAPE. THE SIPES INCIDENT CONSISTS OF APPELLATE SEARCHING FOR KNEECE AND THE VICTIM'S CAR. SIPES MADE NO ALLEGATION OF ASSAULT OR SEXUAL MISCONDUCT. THUS. THE COURT MISCHARACTERIZED THIS EVIDENCE, AND ADMISSION OF IT WAS AN ABUSE OF DISCRETION.

QUESTION #3

DID APPELLATE'S 1977 KIDNAPPING CONVICTION INCLUDE A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPT TO COMMIT A CRIMINAL SEXUAL OFFENSE? MUST THE COURT FIND EVIDENCE OF INTENT?

THE COURT RULED, "IT IS UNCLEAR WHETHER PLAINTIFF COMMITTED A SEXUAL OFFENSE ON THE VICTIM BECAUSE HE WENT INTO THE WOODS WITH HER ALONE. ACCORDING TO KNEECE,

THEY WERE IN THE WOODS FOR SOMETIME BEFORE HE HEARD(3) GUNSHOTS. SHORTLY THERE-AFTER, THE PLAINTIFF RETURNED WITH THE VICTIM'S CLOTHES IN HAND TO THE CAR WHERE KNEECE WAS WAITING. THEREFORE, THE PLAINTIFF IS NOT A CREDIBLE WITNESS IN DETERMINING WHETHER HE COMMITTED A SEXUAL OFFENSE ON THE VICTIM." THEREFORE. THE OBSTICALE TO OVERCOME IS KNEECE'S CREDIBILITY, AND WAS THERE EVIDENCE OF AN INTENT TO COMMIT A SEX OFFENSE.

1) APPELLATE LIED WITH INTENT TO TAKE ALL THE BLAME AND KEEP THE ELLEMENTS OF KIDNAPPING AND MURDER IN AIKEN COUNTY, BUT KNEECE LIED TO AVOID ANY BLAME FOR THE CRIME.

2) INVESTIGATORS QUESTION KEECES CLAIM NOT TO HAVE KNOWN THE VICTIM WAS GOING TO BE KIDNAPPED.

MATTLOCK: DID HE TELL YOU TO DRIVE HIS MOTHER'S CAR?

KNEECE: NO SIR.

MATTLOCK: HOW DID YOU KNOW WHAT HE WAS GOING TO DO?

KNEECE: I DIDN'T. I JUST SLID OVER BEHIND THE WHEEL.

MATTLOCK: HE DIDN'T TELL YOU ANYTHING ABOUT YOU FOLLOW ME OR I'LL FOLLOW YOU, OR ANYTHING ALONG THIS ORDER?

KNEECE: NO SIR.

MATTLOCK: YOU JUST AUTOMATICALLY SLID OVER AND FOLLOWED HIM?

KNEECE: YES SIR.

MATTLOCK: HAVE YOU EVER DONE THIS WITH BILLY WAYNE BEFORE?

[STATE'S EXHIBIT #6 - KNEECE'S STATEMENT P.9]

3) INVESTIGATORS QUESTION KNEECE'S CLAIM THE VICTIM WAS ASLEEP WHEN APPELLATE'S MOTHER'S CAR WAS PARKED IN HIS MOTHER'S FRONT YARD.

GRANT: YOU SAY SHE WAS ASLEEP THE WHOLE TIME YOU WERE IN THE CAR?

KNEECE: WELL, WHEN I GOT IN SHE RAISED UP AND WHEN WE HEADED OUT 19 SHE WENT BACK TO SLEEP.

GRANT: DIDN'T IT SEEM ODD TO YOU THAT SHE WOULD BE SLEEPING AFTER BEING KIDNAPPED? SHE HADN'T BEEN SHOT, HAD SHE?
(ST.EX.6.P6-7)

NOTE: ON PAGE 2, LINE 10-11, KNEECE SAYS APPELLATE GOT OUT OF THE VICTIM'S CAR AT HIS MOTHER'S HOME AND TOLD HIM THE VICTIM WAS PREGNANT. THE VICTIM'S ALARM CLOCK WAS SET FOR 5:15AM (ST. EX. 6. L20). SHE MOST LIKELY USED THE BATHROOM, BRUSHED HER TEETH, AND GOT DRESSED BEFORE LEAVING HOME. THAT'D TAKE ATLEAST TEN MINUTES. LEAVING HOME AT 5:25AM WOULD PUT AT THE ABDUCTION POINT AT 5:35AM — McDUFFIE RD. TO 5TH AND WALTON WAY. IT IS 20 MILES FROM AUGUSTA GEORGIA TO APPELLATE'S PARENTS HOME ON EAST BOUNDARY IN AIKEN, SC. AND YOU CANNOT DRIVE 60 MILES AN HOUR ALL THE WAY. KNEECE HAS US IN THE FRONT YARD TALKING ABOUT THE VICTIM JUST AS ITS TURNING DAYLIGHT THAT TIME OF YEAR - FEBRUARY 25TH. SURELY INVESTIGATORS FOUND THIS HARD TO BELIEVE, KNOWING APPELLATE'S BROTHER, DEPUTY SAMMY McINTOSH, AN UNDERCOVER NARCOTICS OFFICER, LIVED WITH HIS FAMILY AND WOULD HAVE BEEN HOME. (ST. EX. 1). KNEECE DID NOT KNOW THIS.

4) INVESTIGATORS QUESTION KNEECE ABOUT HIS CLAIM APPELLATE SHOT THE VICTIM(3) TIMES WITH A .22 CALIBRE PISTOL.

THE PATHOLOGIST RULED THE CAUSE OF DEATH WAS TWO GUNSHOT WOUNDS TO THE HEAD. GUNSHOT WOUND #1 IS .28 INCHES IN DIAMETER AND GUNSHOT WOUND #2 IS .35 INCHES IN DIAMETER. INVESTIGATOR MATTLOCK, WHO ATTENDED THE VICTIM'S AUTOPSY, REALIZED THE SIGNIFICANCE OF THE DESTINCTLY DIFFERENT SIZE BULLET HOLES AND QUESTIONED KNEECE ABOUT THE SECOND GUN:

MATTLOCK: ALRIGHT, DESCRIBE THE GUN THAT SHE WAS SHOT WITH?

KNEECE: CHROME PLATED .22 AND IT HAD PEARL HANDLES.

MATTLOCK: DID YOU AT ANYTIME SEE BILLY WAYNE WITH ANOTHER GUN BESIDES THE ONE THAT YOU JUST DESCRIBED?

KNEECE: NO SIR.

MATTLOCK: DID YOU HAVE A WEAPON?

KNEECE: NO SIR.

(ST. EX. 6-P5)

MATTLOCK EVEN QUESTIONS KNEECE ABOUT THE FIRING SEQUENCE IN AN APPARENT ATTEMPT TO DETERMINE IF APPELLATE COULD HAVE STOPED SHOOTING LONG ENOUGH TO CHANGE GUNS. (PG. 4).

IT IS MORE LIKELY THAN NOT THE VICTIM WAS SHOT WITH TWO GUNS. THEREFORE, HAVING MET THE PRESUMPTION WITH A VIABLE ALTERNATIVE, APPELLATE ASSERTS THE COURT MUST BE ABLE TO FIND EVIDENCE SUFFICIENT TO SUPPORT AN INFERRENCT OF AN INTENT TO COMMIT A SEX OFFENSE.

APPELLATE DIRECTS THE COURT TO YATES V EVATT, 500 U.S. 391. A PERMISSIVE PRESUMPTION IS CONSTITUTIONAL BECAUSE IT MERELY ALLOWS AN INFERENCE TO BE DRAWN FROM THE PROVEN FACTS. ("THE COURT HAS DISAPPROVED MANDATORY PRESUMPTIONS BECAUSE IT CONFLICTS WITH THE FACT FINDING PROCESS AND CONFLICTS WITH THE PRESUMPTION OF INNOCENCE, SANDSTORM V MONTANNA, 99 S.Ct. 2450, 2459, AND IT INVADES THE FACT FINDING PROCESS.) EVEN IN A CIVIL CASE, THE COURT IS BOUND BY THE LAW OF PRESUMPTION. THE ONLY DIFFERENCE IS THAT IN A CRIMINAL TRIAL THE PREDICATE FACTS MUST BE PROVEN "BEYOND A REASONABLE DOUBT," AND IN A CIVIL CASE IT IS A "MORE LIKELY THAN NOT" - AT-LEAST APPELLATE BELIEVES SC 23-3-430, (CX15) HAS SUCH A PRESUMPTION. OTHERWISE, HOW CAN THERE BE AN EXCEPTION? (SEE DUNCAN V LOUSIANA, 391 U.S. 145, 155; 88 S.Ct. 1444, 1450.)

APPELLATE ASKS THIS HONORABLE COURT FOR A JUDGEMENT ACCORDING TO FACTS AND LAW.

FILED: 12/10/20

BILLY MCINTOSH
990 WISACKY HWY.
BISHOPEVILLE, SC 29010
PRO SE

CC: HARLEY L. KIRKLAND, ESQUIRE
WESLEY A. VORDERER, ESQUIRE

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

HON. ALISON R. LEE, CIRCUIT COURT JUDGE

BILLY WAYNE MCINTOSH - - - - - - - - - - - - - - - - APPELLATE

V

STATE OF SOUTH CAROLINA - - - - - - - - - - - - - - - - RESPONDENT

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED A COPY OF THE INITIAL BRIEF, RECORD ON APPEAL, IN THE ABOVE CAPTIONED CASE ON RESPONDENT BY DEPOSITING IT IN THE U.S. MAIL ADDRESSED TO HARLEY L. KIRKLAND AND WESLEY VORBERGER, PO BOX 11549, COLUMBIA, SC 29211, ON DECEMBER 10, 2020.

MAILED: 12/10/20

B. j. McIntosh

BILLY MCINTOSH
990 WISACKY HWY.
BISHOPEVILLE, SC 29010
PRO SE.

HON. JENNY ABBOTT-KITCHINGS, CLERK
SC COURT OF APPEALS
PO BOX 11629
COLUMBIA, SC 29211

ORIGINAL

RE: MCINTOSH V STATE
CASE NO. 2020-000741
INITIAL BRIEF AND RECORD ON APPEAL

PLEASE FIND ENCLOSED FOR FILING IN YOUR OFFICE THE INITIAL BRIEF, RECORD ON APPEAL, AND PROOF OF SERVICE ON RESPONDENT IN THE ABOVE CAPTIONED CASE. ALSO, APPELLATE IS REQUESTING TO FILE A REDUCED NUMBER OF COPIES DUE TO HARDSHIPS ASSOCIATED WITH BEING AN INDIGENT, PRO SE LITIGANT IN PRISON. TWO COPIES ENCLOSED. THANK YOU.

BILLY MCINTOSH
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DATE: 12/10/20

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Hon. Jenny Abbott-Kitchings, Clerk
SC Court of Appeals
PO Box 11629
Columbia, SC 29211