

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC 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

APPENDIX TO RECORD ON APPEAL

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In The Court of Common Pleas FILED

11th Judicial Circuit 2020 FEB 18 PM 1:37

Lexington, South Carolina LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Civil Action No. 2018-CP-32-02764

Billy Wayne McIntosh)
) plaintiff)

Final

v)

Brief

State of South Carolina)
) Respondent)

This matter comes before the court by motion for Declaratory Judgment under the authority of SC code 23-3-430, Section (C)(15), and Thompson v State, 415 S.C. 580 (2016), filed July 26, 2018, asking the court to review plaintiff's 1977 Kidnapping and Murder conviction, indictment no. 77-65-32-0568, to determine whether or not the crime included

a criminal sexual offense or an attempt to commit a criminal sexual offense.

Matters of Law

1) SC Code 23-3-430, Section (E)(15), does not presume a person convicted of Kidnapping someone 18 years of age or older committed or attempted to commit a criminal sexual offense. It directs the court to determine whether or not the kidnapping included a criminal sexual offense or attempt to commit a criminal sexual offense, and so note its finding on the record to facilitate the registration of kidnapping offenses that included a criminal sexual offense. The statute creates a procedural due process right for a kidnapping defendant to have the court make the determination. It does not presume a kidnapping defendant committed or attempted to commit a criminal sexual offense. See Thompson v State, 415 S.C. 560. (2016).

2) SC Code 23-3-430, Section (C)(15), does not require the state prove the kidnapping included a criminal sexual offense or an attempt to commit a criminal sexual offense. However, SCRC 52(a), requires the court's decision set forth findings of facts and laws sufficient to enable judicial review. "Substantial evidence necessary to support a body's findings is that which a reasonable mind might accept as adequate to support a conclusion," Howard v Kinston, 558 SE 2d 221 (2002).

3) Circumstantial Evidence/Inferences — In a civil case, circumstantial evidence must be assessed in accordance with the totality of the evidence in the case, and the inference assigned to it must be consistent with what is going on; Circumstantial Evidence Charge.

4) Retro-active application of SC Code 23-3-430, section (C)(15), to plaintiff's 1977 Kidnapping and Murder conviction without the Trial Record denies plaintiff equal protection and due process of law; U.S. Const. 14th Amed. "Without the Trial Record, the court cannot sustain a pretense of knowledge sufficient to interpret circumstantial evidence"; Yancy Thompson v State, 423 S.C. 235 (2018). "If no adequate record of what happened at trial can be reconstructed, the court must declare a mistrial — rule in plaintiff's favor"; Rholetter, 162 N.C. App. 653, 542 SE 2d 237 (2004). The State cannot subject plaintiff to the consequences of the law without affording him the Equal Protection and Due Process the law entitles him to; U.S. Const. 4th, 6th, 14th Amed.

5) Prejudice — Plaintiff is an indigent, inexperienced pro se litigant, unable to conduct an investigation,

locate and subpoena witness, and present evidence on his own behalf." Fundamental fairness entitles an indigent defendant an adequate opportunity to present their claims within the adversarial system; Alke v Oklahoma, 470 U.S. 68 (1985). "Anytime a criminal procedure discriminates between indigent and non-indigent defendants, subjecting an indigent defendant to a more onerous process than a non-indigent defendant, the process becomes invidiously discriminatory and violative of Equal Protection of Law;" Ex Parte Lexington County, 442 SE 2d 589 (1994).

Matters of Evidence

- 1) Plaintiff asks the court to note that documents presented by Respondent to establish the record for review were not introduced into evidence at trial. The state's case was dependant upon the testimony of Co-defendant Allen Eugene Kneece, who testified plaintiff walked victim into the woods and shot her (3) times with a .22 calibre pistol, and forensic evidence within these documents refutes that testimony.

2) State's witness Cathy Sipes was actually an unindicted co-defendant. Based on her own admission, she knew plaintiff intended to burn a "hot car", that plaintiff was involved in a murder, and the general location of the victim's body. Yet, she did not report it to police. When a third party heard Cathy was involved in a crime in the news and called police, Cathy told Investigators Matlock and Agent Grant that plaintiff forced her to participate at gunpoint. However, she refused to press charges on plaintiff for kidnapping her. When it came time for trial, Cathy Sipes was given a choice; come as a witness or a defendant; Cathy Sipes' Statement; Article — The State, September 12-13, 1977.

Arguments

1) Plaintiff argues that there is no evidence that the kidnapping and murder of Joyce Heinig included a criminal sexual offense or an attempt to commit a criminal sexual offense (was not sexual in nature).

1) The only mention of rape occurs in Kneece's statement

on page (7): Investigator Mattlock: "Did you know that Billy Wayne had taken ^{her} to the area in the pine thicket to kill her?" Kneece: "When he got out of the car with the gun, I figured he was going to shoot her or something; go up there and rape her or something".

2) Respondent argues that walking the victim into the woods demonstrates an intent to commit a criminal sexual offense; that plaintiff was alone with victim with time and opportunity to commit a criminal sexual offense; that plaintiff removed victim's clothes and that was sexual in nature.

3) Plaintiff directs the court's attention to the pathologist's Report. The Necropsy Report says: Probable Cause of Death: (2) Gunshot Wounds of the Head. On page (3) of the pathologist's Report: Gunshot wound # 1 is .28 inches in diameter. Gunshot wound # 2 is .35 inches in diameter. The distinctly different size bullet holes indicates the victim was shot with (2) guns. On pages 5 and 6 of Kneece's Statement, Mattlock and Grant are questioning Kneece about the second gun and sequence of firing: Grant: "Alright. How about describe the gun she was shot with". Kneece: "Crome plated .22 with pearl handles."

Mattlock: "Did you at anytime see Billy Wayne With another weapon? Did you have a weapon?" Clearly, Investigators believe victim was shot with (2) guns. On page 6, they ASK Kneece about the sequence of firing, apparently to determine if plaintiff stoped shooting long enough to change guns. Mattlock: "What sequence, were they rapid firing or one here, and then a couple seconds later another one?" The evidence that victim was shot with (2) guns refutes Kneece's claim that plaintiff acted alone in the killing of Joyce Heinig and Respondent's claim plaintiff was alone in the woods with victim; having time and opportunity to commit a criminal sexual offense. Furthermore, plaintiff directs the court's attention to pages 6 and 7 of Kneece's statement. The investigators are questioning Kneece about the victim being in the car asleep when plaintiff's car was parked at his (plaintiff's) mother's home. Grant: "You say she was asleep the whole time you were in the car? Didn't it seem strange to you that she was sleeping after she'd been kidnapped? She hadn't been shot, had she?" The investigators suspect the victim was already dead when plaintiff's car was parked at his mother's home.

Conclusion

Based on the evidence presented by Respondent, Investigators believed the Kidnapping And Murder of Joyce Heinig was a planned Assassination, and that her fiance' Gary Mullis was complicit in it. There is no evidence the crime included a criminal sexual offense or attempt to commit a criminal sexual offense. There is no evidence in the record that investigators suspected it did or pursued the investigation along that line. Although the victim's body was recovered nude, the evidence leaves no doubt that the clothes were removed and burned along with victim's car in an attempt to destroy evidence that could identify plaintiff and others involved in the crime. Whether the court believes Joyce Heinig was killed where her body was found or somewhere else, Kneece's claim that plaintiff acted alone in the murder is refuted by the evidence, and that refutes Respondent's claim that plaintiff was alone in the woods with the victim, having time and opportunity to commit a criminal sexual offense.

Plaintiff hereby Appeals to this Havn. Court to relieve him of any further burden in this matter and grant his motion that the 1977

Kidnapping and Murder of Joyce Heinig did not include a criminal sexual offense or an attempt to commit a criminal sexual offense (WAS NOT SEXUAL IN NATURE).

Date Feb. 10, 2020

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