

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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DEC 06 2018

SC Court of Appeals

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DEAN ALTON HOLCOMB,

APPELLANT.

APPELLATE CASE NO 2016-001659

PRO SE ANDERS BRIEF

DEAN ALTON HOLCOMB
Pro Se

Tyger River CI
200 Prison Road
Unit 11-228
Enoree, SC 29335

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STATEMENT OF THE CASE

Appellant was indicted and tried for Obstruction of Justice and Intimidation of a Court Official. The jury found the Appellant guilty of both charges. The court sentenced the Appellant to consecutive sentences of ninety months, or fifteen (15) years.

This Court had conducted the trial of the Appellant in the Breach of Trust case pending before this Honorable Court Case No. 2016-001927 as well. Upon a finding of guilt, the Court sentenced the Appellate to the maximum of five years, though he did not have a record prior to being found guilty of Breach of Contract. The Court reasoned that probation would not have the desired effect on Appellate. The Court's disdain for Appellate is readily apparent. This has prevented any semblance of Due Process for the Appellant from the lower lower Court.

Sometime in the late 80's, the Appellate and Tim Martin were associated with the same female. Arguably, they were competitors for same. In the spring of 2013, Officer Martin arrested Appellate for Breach of Trust. The Appellate had been the spokesman for the corporation of which he was a member. The alleged victim had written a check to the corporation for the work as contracted.

The corporation began the work as agreed and extra work outside of the original terms was completed. A dispute arose as to the value of the extra work.

The alleged victim, approached the police by and through his stepdaughter, regarding the fact that the work work was not completed. Officer Martin took the information that he had been given without contacting the actual homeowners directly or visiting the said property and sought a warrant for Breach of Trust. In the warrant, he stated that the Appellant had cashed the check. Martin stated that Appellant had done no work. From those statements, the warrant for Appellate's arrest was secured.

The Appellate had deposited the check in the corporate checking account. Three subcontractors for said corporation had worked three days painting windows, doors, staining, siding and replacing rotten wood, etc. The Appellate was arrested despite the misstatements of fact and the perjury of Martin. In fact, Martin admitted under the direct examination of the Appellate while acting Pro Se in the present case that every single sentence in the Breach of Trust warrant was false. Starting with the first sentence of the warrant the trial transcript records the following:

Mr. Holcomb: Okay. So you misread the brochure? You misread the proposal; is that correct?

Mr. Martin: Yes.

Mr. Holcomb: Okay. So that's not accurate. The company is Carolina Home Renovators or Carolina Home Renovations? What should it be on the warrant, sir?

Mr. Martin: Renovators.

Mr. Holcomb: So that sentence is inaccurate; is that correct?

Mr. Martin: Yes.

Mr.Holcomb: **So one sentence in the warrant is incorrect so far.**

Does it go on to talk about who the registered
is?

Mr. Martin: **Yes.**

(R. p.482, lines 13-24)

Mr.Holcomb: ...What I'm asking you is that sentence that Dean
Holcomb is the registered agent for Carolina Home
Renovators, the issue at hand, **is that sentence
correct and accurate in the warrant?**

Mr. Martin: **According to the Secretary of State, you're not
the registered agent.**

Mr.Holcomb: **Okay. So that's an inaccurate sentence according
to the Secretary of State; Is that correct?**

Mr. Martin: **According to the Secretary of State.**

(R. p.486, Lines 14-18)

Mr.Holcomb: The question is when it said the Defendant signed
the back of the check, **cashed thecheck, is that
accurate?**

Mr. Martin: I could have put cash deposit, but I didn't.

Mr.Holcomb: The question is, yes or no, the sentence the
Defendant **cashed the check, is that correct?**

Mr. Martin: **For you, no.**

(R. p.493, Lines 14-19)

Mr. Holcomb: No, No, but whenever you filled out the warrant,
you knew work was done and you left out that
sentence?

Mr. Martin: I left it out, yes.

(R. p.561, Lines 10-12)

After Appellate's arrest by Martin he was given the condition of bond that he must maintain weekly contact with Officer Martin. Appellate was forced to contact Officer Martin, despite the fact that he was represented by counsel.

Holcomb began creating satirical cartoons illustrating his contempt for members of the state's law enforcement. In particular he mocked (in the words of Solicitor Ghent) Officer Martin and the rest of the state officials. Officer Wesley Smith labeled the offerings of the Appellant as "comedic". Officer Martin had demanded the contact. In one of the Appellant's Bipolar Psychotic diatribes with Officer Martin, called Deputy Solicitor Harrison a foul name. Appellant would note that the South Carolina Department of Mental Health Forensic Evaluation Service's Dr. Colbi J. Sutton reviewed this email and concluded along with other mental health records that Appellant does indeed have Bipolar Disorder with Psychotic Features. (see Court's Exhibit #1)

From the bad name and cartoons, arrest warrants were sworn out against the Appellant for the afoementioned charges. Martin and Harrison were the alleged victims. Officer Wesley Smith was listed at one time as a victim, but the State used Martin and Harrison as the faces of their case.

The Appellant was found guilty of Obstructing Justice despite the fact that he never hindered Officer Martin from doing his job. And for Intimidating a Court Official despite the fact that he never said a foul word toward the Deputy Solicitor, Ms. Harrison.

ARGUMENTS

1. The trial judge erred in refusing to grant a mistrial on two separate occasions for jury misconduct.

On the first incident, a member of the jury raised her hand, in open court, and stated:

JUROR: I thought this case has already been tried?

THE COURT: I'm sorry?

Juror: I Apologize.

MR. HOLCOMB: Move for a mistrial, sir.

(R. p.499, Lines 5-8)

The Appellant, who was Pro Se, motioned for mistrial. The motion was denied and the trial pressed forward. (R. p.502, Lines 2-4) Counsel was retained further on in the trial.

Immediately prior to the closing arguments, the Court was made aware by another juror that the previously mentioned juror had been discussing the matter throughout the trial and for speaking with attorney Matthew Shealy while they were walking out of the building:

THE COURT: Ms. Huffstetler, You can stand right there. The jury coordinator tells me you told her that Ms. Bowling has been talking about the case.

THE JUROR: Yes, a lot.

THE COURT: A lot?

JUROR: So, I mean, I just-- I kind of weighed on it a few days if I should say something, but yes, a lot. She says she just blocks things out. She doesn't listen because it's repetitive. She even mentioned talking to one of his -- the younger guy that was sitting beside him the first few days, outside of here.

THE COURT: She did mention that.

JUROR: She didn't go into the details of the conversation, but yes, sir, she mentioned they spoke as they were walking out of the building.

(R. p.826 Lines 13-25 and p.827 Lines 1-2)

Counsel for the Appellant made an immediate motion for a mistrial. However, the Court inquired as to each juror as to whether anyone had been discussing the case. They were unanimous in their denial of any such occurrence.

The Court denied Appellant's renewed motion for a mistrial. The Court simply removed the alternate from the jury. This was contrary to what the Court stated was proper:

THE COURT: I received a call from the jury coordinator this morning and was told that one of the jurors, according to her, another juror had been talking about the case. **It's the one who blurted out sometime during the trial.** I've gone over that situation with counsel and **I intend to follow the procedure that I have followed before.** I understand -- without doing any research on it this morning, I understand the proper procedure is to bring

that juror in. I'll definitely dismiss her and seat the remaining alternate,

(R. p.824 Lines 17-25 and p. 825 Line 1)

The juror who had already tainted the jury with her outburst, was given implicit affirmation by the Court with the dismissal of the alternate as opposed to the individual who had expressly announced the fact that the Appellant had been found guilty previously.

The Court picked a side in this matter. Regardless of who was lying, someone was lying. The Court couldn't possibly have understood who it was and, more importantly, whether the "liar" had infected other jurors. Maintaining the flawed jury panel was an abuse of discretion.

In State v. McGuire, 272 S.C. 547, 253 S.E.2d 103 (1979) the South Carolina Supreme Court wrote:

[A] jury should not begin discussing a case, nor deciding the issues, until all of the evidence, the argument of counsel, and the charge of the law is completed...The reason for the rule is apparent. The human mind is constituted such that when a juror declares himself, touching any controversy, he is apt to stand by his utterances to the other jurors in defiance of evidence. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation.

2. The trial judge erred in refusing to grant the Appellant's motion for a mistrial based on the jury receiving into evidence something the Court declined to admit.

Counsel for the Appellant attempted to begin his representation on Thursday morning June 15, 2017. The State objected and utilized Caplan & Drysdale, Chartered v. United States, as the basis of its argument. The State argued that Caplan stood for the premise that a Defendant was not assured legal counsel. Upon review, Appellant Counsel pointed out that the case stood for the fact that you are not entitled to the counsel of your choice, unless you can pay for said counsel. In no way did the case stand for the State being able to deny counsel, as guaranteed in the 6th Amendment. (R. p. 622-623, Lines 13-25 & 1-23)

"The sixth Amendment right to counsel attaches upon initiation of adversarial judicial proceedings and at all critical stages of a criminal trial." Michigan v. Jackson, 475 U.S. 625, 629, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986). The ability to have counsel is the "principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promote public respect for the criminal process by focusing on the underlying fairness of the trial rather than the virtually inevitable presence of immaterial error." Delaware v. Van Arsdall, 475 U.S. 673, 681, 106 S.Ct 1431, 89 L.Ed.2d 674 (1986). There is no qualification as to when the Sixth Amendment right to counsel begins or ends. It attaches at all critical stages of a criminal trial.

Counsel's late entry into the fray was fatal to the Appellant. In his manic state, he rushed to publish records by the State. Included in those records was a report created by the State expert on the validity of the threat allegedly presented by the Appellant. Appellant had previously argued successfully that the evidence should not be submitted to the jury, pursuant to State v. Huckabee 419, S.C. 414, 798 S.E.2d 584 (2017). However, in his last venture into cross-examination, he unwittingly submitted the report of the report of the expert into evidence. He then published it to the jury. This was exactly the critical stage hypothesized by the legislature. (R. p.622-23, Lines 13-25 & 1-10)

Huckabee stood for the fact that it is the jury's purview to analyze intent. The Court reasoned in this case that it was up to the jury to determine whether the threats claimed by the alleged victims was credible. The report created by the State took determination away from the jury and allowed someone outside the jury to make a factual determination in violation of due process.

The State argued that the files, Defense Exhibits 21 and 22, were not published to the jury. They were published twice, once before a discussion (out of the jury's presence) about the submission of the evidence, and re-published to the jury upon their return to the courtroom. The State attempted to bleach the evidence from the jury's minds by asking the Court to remove the exhibits. The Court agreed to make the evidence disappear. Much like the unsolicited announcement by the juror, the damning "bell" of the material found in the exhibits could not be "unrung".

This occurred because the State, with the affirmations of the Court, prevented attorney Donald Smith from stepping into the shoes of the Appellant. These actions violated Appellant's fundamental right to counsel.

3. The trial judge abused his discretion in denying Appellant's attempt to illustrate that his medically determined mental health condition was likely a factor in his conduct.

Appellant had served notice on the State of his intention to present evidence of psychotic episode at the time of the email in question on or about May 21, 2017 after being granted Pro Se status. Appellant had spoken in detail with Dr. Earnest Martin about the email in question, his negative reaction to a new drug, Fanapt, and his subsequent hospitalization on or about the week the email was sent.

The Court denied Appellant's attempt to present evidence of his undisputed mental disability (R. p. 744, line 1) Appellant suffers from Bipolar Disorder according to Dr. Martin and State Forensic Examiner Dr. Colbi Sutton and many other doctors. Dr. Martin had successfully treated Appellant for over two years while he was held at the Greenville County Detention Center. The Court would not allow Dr. Martin to testify as to his knowledge of the Appellant's condition, how his condition affects his behavior and how Bipolar psychotic episodes remove filters from what would normally is a reasonable man. (R. p. 731, line 24 & p. 732-745).

The Court's ruling to prevent Appellant from introducing his disability violated the Americans with Disability Act and Rule 5(f) of the SCRCrP. The ADA was amended in 2008 to include Bipolar Disorder as a covered condition. For ADA purposes, major life activities may be limited because of this order could include learning, thinking, concentrating, interacting with other people, caring for oneself, speaking

performing manual tasks. Sleep may also be limited in such a way that daily activities are impaired.

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, Evidence which is not relevant is not admissible.

South Carolina Rules of Evidence, Rule 402

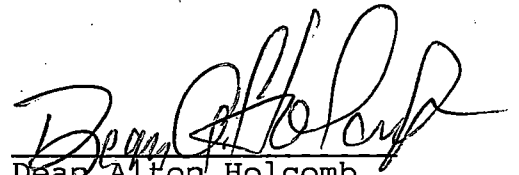
"Generally, any evidence that assists in getting at the truth of an issue is deemed to be relevant and is admissible, unless excluded by some legal rule." Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967). "Generally, the probative value of the evidence will outweigh the prejudicial effect if the offered evidence is especially needed to prove some matter in issue." State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940). In this matter, the prejudice came from not allowing the jury to understand the significant history of Bipolar disorder the Appellant had been saddled with his whole life.

The question is not whether he understood right from wrong. The question is whether his disorder allowed him to take that factor into consideration. The ADA has already recognized the disabling condition of Bipolar Disorder. Given the fact that one of the main factors is the inability to get along with others, the relevance of the condition is overwhelming. If someone suffers from Tourette's Syndrome, and has an outburst in Court, does the person not get to defend him or herself with the fact that they suffer from the condition? No one chooses to have a medical condition. The idea of not being able to explain that condition to the jury is not only discriminatory in nature, but it is also fundamentally unfair.

There is no more important place in American Jurisprudence to have fairness, or an even playing field than a jury trial. This lower Court provided a highly prejudicial, uneven playing field on which the Appellant had to fight for his freedom. A new trial is necessary to allow him to have the opportunity to defend himself not from the bottom of a slippery slope.

CONCLUSION

For all the reasons stated herein, the Appellant respectfully requests that the motions for mistrial that were previously denied be reconsidered and granted. Due process is foreign to the Appellant. As a citizen of the United States, and South Carolina, he deserves due process of the law. In fact, as a citizen, he is entitled.


Dean Alton Holcomb
Pro Se

20th of November, 2018
Tyger River CI
200 Prison Road, unit 11-228
Enoree, SC 29335

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Pro Se Anders Brief in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Asseby Street, Room 519, Columbia, SC 29201; and a copy of the Pro Se Anders Brief have been served upon Wanda H. Carter 1330 Lady Street, P.O. BOX 11589, Columbia, SC 29211-1589 by depositing with Tyger River Official MAIL ROOM VIA CARRIER, for delivery via Pre-paid U.S. POSTAGE on this 20th day of November, 2018.

Dean A. Holcomb

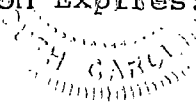
Dean Alton Holcomb
Pro Se

SUBSCRIBED AND SWORN TO before me
this the 22th day of November, 2018.

[Signature]

Notary Public for South Carolina

My commission Expires: DEC 10, 2024



DEAN A. HOLCOMB
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November 28, 2018

The Honorable Jenny Abbott
Clerk of the SC Appeals Court
P.O. Box 11629
Columbia, SC 29211

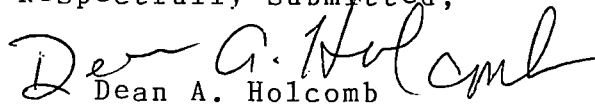
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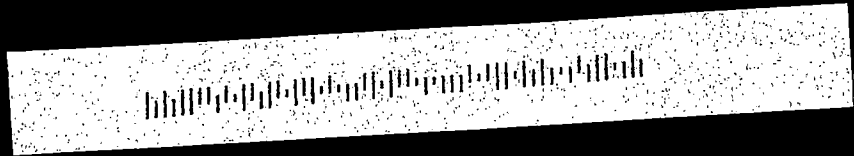
Re: The State v. Dean Alton Holcomb (2)
Appellate Case No. 2017-001659

Dear Clerk of Court:

Please find enclosed the Appellant's Pro Se Intial Brief in response to Coinsel's Anders_Brief motion. I ask that you stamp, copy and return a copy to me for my records. Also enclosed is a copy of Proof of Service.

Respectfully submitted,


Dean A. Holcomb



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