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

CIVIL ACTION NO. 2020-000741

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

v.

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

FINAL BRIEF

BILLY WAYNE MCINTOSH, 87743
990 WISACKY HWY.
BISHOPEVILE, SC 29010
APPELLATE - PRO SE

TABLE OF CONTENTS

TABLE OF CONTENTS - - - - - - - - - - - - - - 2

AUTHORITIES - - - - - - - - - - - - - - - - - 3

STATEMENT OF CASE - - - - - - - - - - - - - - - 4

ISSUES ON APPEAL - - - - - - - - - - - - - - 4

ARGUMENTS - - - - - - - - - - - - - - - - - 5

AUTHORITIES

STATUTES

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

CASES

AKE V OKLAHOMA, 430 US 68

DOES V SNYDER, 834 F3d 696

DOUGLAS V STATE, 83 S.Ct. 814

EX PARTE LEXINGTON COUNTY, 442 SE2d 589

HAZEL V STATE, 377 SC 60

STATE V LANGFORD, 400 SC 421

THOMPSON V STATE, 415 SC 560

SECONDARY SOURCES

73 AMER. JURIS 2d. STATUTES § 166

CJS STATUTES § 585

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 SC CODE §23-3-430, SECTION-C(15), AND THOMPSON V STATE, 415 SC 560 (2016), SEEKING A JUDGEMENT ON WHETHER OR NOT THE KIDNAPPING OFFENSE INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE. A BENCH TRIAL WAS HELD JULY 31, 2019, AND THE COURT RULED THAT IT WAS UNCLEAR WHETHER OR NOT APPELLATE COMMITTED A SEX OFFENSE ON THE VICTIM BECAUSE HE WENT INTO THE WOODS ALONE WITH HER; THEREFORE, PLAINTIFF FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT HE DID NOT COMMIT A SEX OFFENSE ON THE VICTIM, AND HIS KIDNAPPING CONVICTION IS SUBJECT TO SEXOFFENDER REGISTRATION.

ISSUES ON APPEAL

DOES RETROSPECTIVE APPLICATION OF SC CODE 23-3-430, SECTION-C(15), DENY APPELLATE EQUAL PROTECTION AND DUE PROCESS OF LAW?

QUESTION

DOES RETROSPECTIVE APPLICATION OF SC CODE 23-3-430, SECTION-C (15) DENY APPELLATE EQUAL PROTECTION AND DUE PROCESS OF LAW?

ARGUMENT

EQUAL PROTECTION 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 TRIAL COURT'S SUPERIOR POSITION TO JUDGE THE CHARACTER OF A WITNESS AND THE WEIGHT OF THE EVIDENCE, TRIAL COUNSEL AND EXPERT TESTIMONY TO CHALLENGE THE STATE'S EVIDENCE, AND APPELLATE COUNSEL TO APPEAL ANY ADVERSE RULINGS BY THE COURT ON ADMISSION OF EVIDENCE OR ERROR OF LAW. ON RETROSPECTIVE APPLICATION OF THE LAW IN THE COURT OF COMMON PLEAS, APPELLATE STOOD 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 SUBPOENA WITNESSES, PRESENT EXPERT TESTIMONY, OR DO ANY OTHER THING ~~THAT~~ TO CHALLENGE THE STATE'S EVIDENCE IN AN ATTEMPT TO MEET OR REBUTT THE PRESUMPTION THE STATUTE CARRIES. STATE LAW PROHIBITS INMATES FROM UTILIZING THE FREEDOM OF INFORMATION ACT, AND THE ONLY EVIDENCE AVAILABLE TO APPELLATE IS WHAT THE STATE INTENDS TO SUPPORT ITS CASE. (EVEN IF APPELLATE WAS NOT INCARCERATED, HE WOULD STILL BE

AN INDIGENT, INEXPERIENCED PRO SE LITIGANT.)

A STATE CAN, CONSISTENTANTLY 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. ANY TIME 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 AN 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 AN INTERPRETATION PRODUCING A SENSELESS DISTINCTION OR DISCRIMINATION, OR UNEQUAL OPERATION GENERALLY, OF A STATUTE, 73 AMER. JURIS. 2d STATUTES § 166. WHERE A STATUTE TAKES AWAY OR IMPAIRS A VESTED RIGHT(S) 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.

SC CODE 23-3-430, SECTION-Q(15), MANDATES THAT THE (TRIAL) COURT DETERMINE WHETHER OR NOT A KIDNAPPING OFFENSE INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE, AND CREATES A PROCEDURAL DUE PROCESS RIGHT OF THE DEFENDANT TO HAVE THE (TRIAL) COURT MAKE THE DETERMINATION, AND SO NOTE ITS DECISION ON THE RECORD. SUCH IS THE CUSTOM OR PRACTICE OF THE COURT TODAY. IN HALEL V STATE, 377 SC 60,

THE SC SUPREME COURT RULED THAT THE COURT OF COMMON PLEAS HAS JURISDICTION OVER SC 23-3-430, SECTION-C(15), BECAUSE IT IS A CIVIL STATUTE, AND BY VIRTUE OF HAZEL'S MOTION FOR DECLARATORY JUDGEMENT. THE COURT'S DECISION WAS INTENDED TO ACCOMMODATE HAZEL'S RIGHT TO HAVE THE COURT DETERMINE WHETHER OR NOT HIS KIDNAPPING OFFENSE INCLUDED A CRIMINAL SEXUAL OFFENSE OR AN ATTEMPTED CRIMINAL SEXUAL OFFENSE, AND, THEREBY, FACILITATE RETROSPECTIVE APPLICATION OF SC 23-3-430, SECTION-C(15). ALTHOUGH RETROSPECTIVE APPLICATION OF A CIVIL STATUTE IS NOT UNCONSTITUTIONAL, CONCURRENT JURISDICTION OVER SC CODE 23-3-430, SECTION-C(15), BETWEEN THE CIRCUIT COURT AND COURT OF COMMON PLEAS CREATES A DISPARITY IN TREATMENT THAT VIOLATES APPLICANT'S RIGHT TO EQUAL PROTECTION OF LAW. AT TRIAL, A KIDNAPPING DEFENDANT IS PROTECTED BY THE FULL PENELOPE OF DUE PROCESS OF LAW, BUT THOSE PROTECTIONS ARE STRIPED AWAY DURING RETROSPECTIVE APPLICATION OF SC 23-3-430, SECTION-C(15), IN THE COURT OF COMMON PLEAS, WHERE THE COURT MUST CONDUCT A BENCH TRIAL ON AN ISSUE ARISING FROM A KIDNAPPING OFFENSE THAT OCCURED TEN, TWENTY, OR FOURTY YEARS AGO — SOMETIMES WITHOUT A TRIAL RECORD, AS IN APPLICANT'S CASE.

DUE PROCESS OF LAW

HOW MUCH PROCESS IS DUE DEPENDS ON WHAT'S AT STAKE. THE U.S. SUPREME COURT HELD THAT SEX OFFENDER REGISTRATION AFFECTS NO RIGHT OTHER THAN THE RIGHT TO PRIVACY, AND ANY CHALLENGE TO REGISTRATION WARRANTS ONLY MINIMUM DUE PROCESS. HOWEVER, TIME HAS SINCE REVEALED THAT BEING LABLED A SEXOFFENDER AND SEXOFFENDER REGISTRATION LAWS ARE PUNITIVE. PREVAILING BEFORE THE U.S. SIXTH CIRCUIT COURT OF APPEALS IN DOES V SNYDER, 834 F3d 696. THE COURT STATED, "IN SUM, WHILE SORA IS NOT IDENTICAL TO

ANY TRADITIONAL PUNISHMENT, IT MEETS THE GENERAL DEFINITION OF PUNISHMENT, HAS MUCH IN COMMON WITH BANISHMENT AND PUBLIC SHAMING, AND HAS A NUMBER OF SIMILARITIES TO PAROLE/PROBATION." IT WAS NOTED IN THOMPSON V STATE, 415 SC 560, THAT BEING CLASSIFIED A SEXOFFENDER HAS IMMEDIATE AND HARMFUL CIVIL CONSEQUENCES. THOMPSON WAS NOT ALLOWED TO ATTEND A DRUG TREATMENT PROGRAM INSIDE THE SCDC. SEXOFFENDERS ARE DENIED ENTRY TO CLAFFLIN UNIVERSITY'S BACHLOR DEGREE PROGRAM HOSTED BY SCDC. APPLICANT FACES A MORE ONEROUS PAROLE PROCESS BECAUSE SEXOFFENDERS ARE CONSIDERED A HIGHER RISK OF RE-OFFENDING. THE CONSEQUENCES OF BEING LABLED A SEXOFFENDER EMINATES FROM AND BEYOND HAVING ONES NAME LISTED ON A PUBLICLY DISSEMINATED SEXOFFENDER REGISTRY. THOSE CONSEQUENCES ARE SUBSTANTIAL, HARMFUL, AND PUNITIVE. CONSEQUENTLY, A KIDNAPPING DEFENDANT FACING A BENCH TRIAL ON RETROSPECTIVE APPLICATION OF SC 23-3-430, SECTION-C(15), SHOULD BE AFFORDED THE SAME PROTECTIONS PROVIDED A KIDNAPPING DEFENDANT BEFORE THE TRIAL COURT (TRIAL COUNSEL, PROFESSIONAL WITNESSES, AND APPELLATE COUNSEL); AND THE SAME PROTECTIONS EVERYONE ELSE ON THE SEXOFFENDER REGISTRY HAD.

CONCLUSION

RETROSPECTIVE APPLICATION OF SC 23-3-430, SECTION-C(15) TO APPELLATE'S 1977 KIDNAPPING CONVICTION WITHOUT THE TRIAL TRANSCRIPT OR COUNSEL TO CHALLENGE THE STATE'S EVIDENCE IN A BENCH TRIAL, LEAVES APPELLATE WITHOUT THE ABILITY TO REBUTT THE STATUTE'S PRESUMPTION (WITHOUT A FAIR AND MEANINGFUL OPPORTUNITY TO DO SO). THE INABILITY TO UTILIZE THE ADVERSARIAL PROCESS IS A DENIAL OF EQUAL PROTECTION AND DUE PROCESS OF LAW, AKE V OKLAHOMA, 430 US 68.

FURTHER, THE STATE BEARS RESPONSIBILITY FOR A DELAY THAT RESULTED IN LOSS OR DESTRUCTION OF RECORDS AND DETERIORATION OF EVIDENCE. STATE V LANGFORD, 400 SC 421. (SEX OFFENDER REGISTRATION ACT 1994 - THOMPSON V STATE 2016.)

PREJUDICE

THE BENCH TRIAL COURT ORDER RELIES ON CO-DEFENDANT KNEECES STATEMENT THAT APPELLATE WALKED THE VICTIM INTO THE WOODS AND SHOT HER WITH A .22 CALIBRE PISTOL (R.p.100 L22-26). APPELLATE ARGUED THAT THE DISTINCTLY DIFFERENT SIZE BULLET HOLES IN THE VICTIM'S HEAD INDICATES THAT EACH WOUND WAS INFLICTED BY A WEAPON OF DIFFERENT CALIBRE (R.p.100 L22-33; R.p.47 L9-25; R.p.48 L1-25; R.p.49 L1-5), AND THE INVESTIGATORS QUESTIONED KNEECE ABOUT THE SECOND GUN (R.p.87 L22-30; R.p.88 L1-11). BEING ABLE TO LOCATE AND SUBPOENA LEAD SLED INVESTIGATOR PAUL A. GRANT AND PRESENT THE OPINION OF A BALLISTICS EXPERT OR FORENSIC SCIENTIST WOULD HAVE ENABLED APPELLATE TO ESTABLISH THE MOTIVE FOR THE CRIME AND THAT KNEECE WAS LYING ABOUT APPELLATE BEING IN THE WOODS ALONE WITH THE VICTIM - A FACT THE COURT ORDER RELIES ON. THE VICTIM WAS SHOT BY TWO PEOPLE.

IT IS NECESSARY TO NOTE THAT NEITHER THE COURT NOR RESPONDENT DISPUTES THAT THE VICTIM'S CLOTHES WERE REMOVED AND BURNED ALONG WITH THE VICTIM'S CAR IN ORDER TO HAMPER IDENTIFICATION OF THE VICTIM'S BODY AND DESTROY ANY EVIDENCE THAT MIGHT LINK US TO THE CRIME. THE RESPONDENT ARGUES THAT REMOVING THE VICTIM'S CLOTHES / UNDER GARMENTS WAS UN-NECESSARY AND SEXUAL IN NATURE (R.p.63 L1-24). APPELLATE CITES DAFT V. STATE, 288 SC 30 (EVEN THOUGH DAFT REMOVED THE VICTIM'S CLOTHES, THE JURY COULD HAVE CONCLUDED DAFT DID NOT INTEND TO DO MORE.)

RESPONDENT PRESENTED AN UNFOUNDED ALLEGATION OF KIDNAPPING AND RAPE IN AN UNRELATED CASE AS PROPENSITY EVIDENCE (R.p.81; R.p.41 L13-P.42 L25; R.p.46 L9-24; R.p.51 L9-P.52 L3), AND THE COURT CITES THAT AND THE ABDUCTION OF STATE'S WITNESS CATHY SIPES AS A COMMON SCHEME OR PLAN TO KIDNAP, ASSAULT, AND RAPE WOMEN; CREATING A SPURIOUS PRESUMPTION OF RAPE IN THIS INSTANT CASE. HOWEVER, APPELLATE WAS NOT CHARGED WITH KIDNAPPING OR ASSAULTING SIPES, AND SHE DID NOT ACCUSE APPELLATE OF ASSAULT OR RAPE (State's exhibit #4, R.p.82; State's exhibit #13, R.p.114). SLED INVESTIGATOR PAUL A. GRANT COULD HAVE CONFIRMED THAT

INVESTIGATORS SUSPECTED CATHY SIPES WAS A WILLING PARTICIPANT IN THE SEARCH FOR KNEECE AND THE VICTIM'S CAR (BASED ON THE FACT SIPES DID NOT CALL THE POLICE AND REFUSED TO PRESS CHARGES ON APPELLATE). GRANT COULD ALSO VERIFY THAT PEGGY TRUITT'S ALLEGATION OF RAPE HAD NO MERIT. (Rp.71-72; Rp.120)

CONCLUSION

IT IS CLEAR THAT THE COURT WAS COMPELED TO RESORT TO THE STATUTE'S PRESUMPTION — SC CODE 23-3-430, Sec. C-(15), AND APPELLATE COULD NOT POSSIBLY REBUTT THAT PRESUMPTION WITHOUT THE ABILITY TO UTILIZE THE ADVERSARIAL SYSTEM. APPELLATE SHOULD NOT BE SUBJECT TO THE CONSEQUENCES OF THE LAW WITHOUT THE DUE PROCESS AND EQUAL PROTECTION OF THE LAW ITSELF; ATLEAST A BENCH TRIAL THAT IS FAIR AND MEANINGFUL.

ADDENDUM

HAD APPELLATE NOT RECEIVED A 2020 ECONOMIC STIMULAS CHECK, HE COULD NOT HAVE PAID FOR THE BENCH TRIAL TRANSCRIPT AND WOULD HAVE THEREBY BEEN DENIED THE RIGHT TO APPEAL THE LOWER COURT'S DECISION.

DATE: 8-9-21

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