

SUPREME COURT OF SOUTH CAROLINA

State v. Wills

409 S.C. 183 (2014) · Decided July 16, 2014

SUMMARY

The South Carolina Supreme Court held that a criminal defendant may waive the protections of Rule 410 of the South Carolina Rules of Evidence. It affirmed the admission of the defendant’s statement because the defendant’s proffer agreement, entered with counsel’s advice, expressly allowed the State to use statements if specified conditions were met.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Pleicones; Chief Justice Toal; Justice Kittredge; Justice Beatty; Justice Hearn
JURISDICTION	South Carolina
DECIDED	July 16, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of South Carolina granted certiorari to review the Court of Appeals' decision affirming the circuit court's admission of the defendant's statement made in connection with a proffer agreement.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Wills v. State

TOPICS

- criminal procedure
- evidence
- appellate procedure
- preservation of error

PRACTICE AREAS

- criminal procedure
- evidence
- appellate procedure
- contracts

QUESTIONS PRESENTED

1. Whether a criminal defendant may waive the protections afforded by Rule 410 of the South Carolina Rules of Evidence.

2. Whether Wills's proffer agreement waived the protections of Rule 410 under the circumstances of the case.

HOLDINGS

1. A criminal defendant may waive the protections afforded by Rule 410, SCORE.
2. Wills waived the protections of Rule 410, SCORE, because his proffer agreement expressly provided that his statements could be used against him for any legal purpose and that information obtained through the proffer could be used in any direct or collateral fashion.

KEY QUOTATIONS

"We agree with the Court of Appeals that a criminal defendant may waive the protections afforded by Rule 410." (185)

"Applying the rules of contract construction here, "regardless of the agreement's wisdom or lack thereof," we agree with the Court of Appeals that, on this record, petitioner's Proffer Agreement, entered with the advice and consent of counsel, waived the protections of Rule 410, SCORE." (185)

FACTUAL BACKGROUND

Wills made a statement in connection with a proffer agreement entered into with the State and advised by counsel. The agreement provided that if a subsequent polygraph examination demonstrated deception, inconsistencies, or that Wills shot the victim, the proffer terms would become null and void and his statements could be used against him for any legal purpose, including plea disposition, trial, and impeachment. The agreement also provided that the State could use information obtained through the proffer in any direct or collateral fashion.

PROCEDURAL HISTORY

The circuit court admitted the defendant's proffer statement. The Court of Appeals affirmed. The Supreme Court of South Carolina granted certiorari and affirmed the Court of Appeals.

DISPOSITION

affirmed

CASES CITED

- State v. Wills, 390 S.C. 139, 700 S.E.2d 266 (Ct. App. 2010)

OPINION

PLEICONES, J.

Justice PLEICONES. We granted certiorari to review the decision of the Court of Appeals affirming the circuit court's decision to admit petitioner's statement made in connection with a

proffer agreement. State v. Wills, 390 S.C. 139, 700 S.E.2d 266 (Ct.App.2010).

We affirm. The first question raised by this case is whether a criminal defendant may waive the protections afforded by Rule 410, SCRE.¹ If we decide that he may, the next issue is whether the Court of Appeals was correct in holding that petitioner did so here.² We answer both questions “yes.” Rule 410, SCRE, titled “INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS,” provides: Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any court proceedings regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. *185However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

We agree with the Court of Appeals that a criminal defendant may waive the protections afforded by Rule 410. Here, petitioner and his attorney executed an agreement wherein petitioner agreed that if a subsequent polygraph examination demonstrated deception, inconsistencies, or that petitioner shot the victim, then “the terms of this proffer are null and void and any statements made by [petitioner] may be used against him by the State for any legal purpose, including... disposition of charges through plea or trial... and impeachment.” Proffer Agreement section 2 (emphasis supplied).

Further, section 7 provides in relevant part not only that petitioner’s violation of the Agreement would render the Proffer’s terms null and void, but also that “the State shall have the right to use any information obtained through this Proffer in any fashion, whether direct [or] collateral.... ” Applying the rules of contract construction here, “regardless of the agreement’s wisdom or lack thereof,” we agree with the Court of Appeals that, on this record, petitioner’s Proffer Agreement, entered with the advice and consent of counsel, waived the protections of Rule 410, SCRE.

The decision of the Court of Appeals is AFFIRMED. TOAL, C.J., KITTREDGE, J., concur. BEATTY, J., dissenting in a separate opinion in which HEARN, J., concurs.. Although it is questionable whether the Rule 410 issue was preserved for appellate review, it formed the basis for the Court of Appeals’ decision upon which we granted certiorari, and we therefore address the merits..

The Court of Appeals’ opinion contains a full explanation of the facts of this case, including the terms of the Proffer Agreement.

