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JUL 28 2023

State of South Carolina SC Court of Appeals
IN THE COURT OF APPEALS

Appeal from greenville county
Honorable Perry H. Gravelly, Circuit Court Judge

THE STATE

RESPONDENT,

V.

DYLAN TREY FOSTER,

APPELLANT

APPELLATE CASE NO. 2022-001274

PRO-SE BRIEF OF APPELLANT

DYLAN TREY FOSTER
PRO-SE

Dylan Trey Foster #383627
386 REDEMPTION WAY
McCORMICK, SC, 29899

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Statement of issue on appeal

- ① Did the trial court err in allowing audio statement made by appellant into trial stating he filed for public defender was not enough to invoke his right to counsel during Jackson v. Demos hearing?
- ② Did the trial court err in denying motion for a directed verdict on CSC 1st when the state ~~failed~~ failed to show any aggravated force?
- ③ Did the trial court err in denying motion for a directed verdict on kidnapping?
- ④ Did the trial court err in allowing a picture "exhibit 8" into the trial after defendant's objections?

Statement of the Case

① Appellant was indicted in Greenville County for first-degree burglary, first degree criminal sexual conduct, kidnapping, and first degree domestic violence and on August 31, 2022, he was tried before the honorable Perry H. Gravely and a jury. R.I. Courtney C. Langverk, Brittany D. Scott, and Haley E. Kernell represented the State. R.I. Russell C. Stanford represented appellant. The jury acquitted appellant of burglary, first-degree CSC, and domestic violence. R. 336, 1.3-337, 1.14. The jury convicted appellant of second-degree CSC and kidnapping. Judge Gravely sentenced appellant to concurrent sentences of fourteen years imprisonment. R. 344, 1.7-12. This appeal follows

② An accused is entitled to a directed verdict when the evidence merely raises a suspicion of guilt

Standard of review

once a criminal defendant invokes his sixth amendment right to counsel, a subsequent waiver of that right to counsel, ~~at~~ even if voluntary, knowing, and intelligent under traditional standards is presumed invalid if secured pursuant to police-initiated conversation - Michigan v. Jackson 475 U.S. 625, 634, 106 S.Ct. 1404, 89 L.Ed.2d 631, (1986) - Supreme Court. The State v. Randy Wakefield Anderson, as additional support for admitting appellants statements into evidence, the trial court found that appellants signing of the paperwork for a public defender was not enough to invoke his right to counsel, however, pursuant to the State v. Council, 335 S.Ct. 1, 15-16, 515 S.E.2d 508, 515 (1999) "we believe signing the paperwork requesting a public defender did invoke appellants sixth amendment right to counsel. - Supreme Court Michigan v. James, Michigan v. Jackson (1986) Judge Howard; Fitzridge.

an accused is entitled to a directed verdict when the evidence merely raises a suspicion of guilt

① Argument

The trial court erred in allowing statement into trial made by appellant to police over appellants objections that he had applied for a public defender and letting the audio in would violate appellants rights to counsel, The trial court stated it was voluntary made and let the audio in, this violated appellants sixth amendment rights.

On August 17th 2019 the lead investigator for this case "Cheri Lyda" called the Greenville County Detention Center to schedule to meet with appellant, p. 171, 4-6, when she met with appellant, she read him his miranda rights, which was in paper form, appellant signed the paperwork she had, they talked for over 45 minutes, 20 or more of the minutes Mrs. Lyda and appellant did not even talk about the case, mainly of his drug addiction and life, but during the first part of the conversation, Mrs. Lyda asked appellant if he wanted an attorney, and the appellant stated that he had "applied for a public defender,"

and that they told him it would be around two weeks until they came to see him. P. 178. 11-14, The attorney for appellant asked her if she contacted the public defenders office to see if he was represented, P. 178, 15-22 She stated she did not contact them to see if he was represented.

With Mrs. Lyda stated she initiated contact by contacting the detention center to schedule an appointment, the appellant did not initiate contact himself, and once he stated that he had applied to the public defenders office "that stated that he wished to be represented," and any waiver of defendants right to counsel for that police initiated interrogation is invalid. *Anderson vs. Arizona* - as additional support *State v. Randy Wakefield Anderson's* case is similar to this case, the trial court found that signing paperwork for a public defender was not enough to invoke appellants right to counsel, however, pursuant to *State v. Council*, 335 S.C. 1, 15-16, 515, S.E. 2d 508, 515 (1999) we believe signing paperwork requesting a public defender did invoke appellants sixth amendment right to counsel. Appellant should be granted a new trial, without the audio statement. ~~2~~

② Argument

Did the trial court err in denying appellants request for a directed verdict for CSC 1st when there was no physical evidence whatsoever of aggravated force?

The indictment drafted by the solicitors office stated that appellant had used aggravated force to accomplish sexual battery. The Jury acquitted appellant on the 1st Degree CSC, but found him guilty on 2nd degree CSC. Since CSC first degree charge should have been granted a directed verdict, there would not have been a lesser included offense to be charged. There was no physical evidence shown by the nurse from the hospital the victim was seen at, and the only DNA sample they found, they could not pin point appellant, and the expert ~~DNA~~ DNA analyst doctor Brian Browning stated the dna they found happened more frequent in african americans than caucasians, p. 247 8-11, with appellant being caucasian, there was no physical proof at all in this trial that appellant was guilty or that any violence of a

high and aggravated nature ever occurred,
therefore the trial court should have
granted a directed verdict for CSC 1st
and it would have resulted in CSC 2nd
never being submitted.

③ Argument

The Trial Court erred in denying A directed verdict for kidnapping after trial showed victim lied about not having her phone, and telling authorities she had dropped appellant of at not one but three different places, and other inconsistent statements and evidence shown throughout the trial.

The victim states appellant took her phone and her keys, made her drive him to a gas station, then she left him at a shopping center, she told the 911 operator she dropped him off at a gas station, but during the trial testified she dropped appellant off at his friends house, R. 123, 1. 2-7, R. 87, 1. 7-12, she contradicted herself not twice but three times, when the victim and appellant left the apartment they were caught on camera, "Defendants exhibit 1" shows picture of appellant walking a good ten feet in front of victim showing he was not physically forcing her to leave, R. 98, 5-8. victim stated she never had her phone that appellant took her phone so she could not call for help, but "Defendants exhibit 2"

is a picture showing victim inside the QT gas station with her phone, R. 101, 9-10
Appellants lawyers ask if appellant gave her phone back if she had it and she stated NO, but once exhibit 2 was entered she admitted she had her phone, R. 101, 19-25, while victim was with appellant inside his friends house she stated she could always see appellant and was never left alone, R. 100, 9-17, Contradicting to statements made by Lawson Janavello, stating him and appellant went into another room and victim was in another room with his girlfriend, R. 263, 20-22, he also testified when he and appellant came out of the house, victim was in his driveway sitting in her running car alone, R. 264, 11-14. With a picture showing appellant not physically in any way forcing her to leave, her own statements, she states she dropped him off at a gas station, a shopping center, and finally she changes story to she dropped him off at his friends house, with her stating she tried to get to a phone multiple times but was unable to contact police because appellant had took her phone, but evidence showed otherwise, all of these put together the trial court should have granted the appellant a directed verdict motion, Therefore

③ Argument.

This Court should reverse this conviction, and grant the directed verdict motion. The overwhelming contradictions by the victim for the charge of kidnapping and the proof set forth in trial, the trial court should have granted a motion for directed verdict on this charge.

Argument

Did the trial court err in allowing exhibit 8, a picture of victims busted lip into trial over objections from appellant?

R. 81, 20-25, R. 82, 1-25, the State entered a picture the victim stated she took at the hospital of her lip she states happened during the assault, this picture in question was sent to the solicitor April 2022, R. 104, 3-22, and it could have happened anytime, there was no date stamps, and the nurse from the hospital testified no pictures were taken of the victim, contradicting the victim, R. 157, 15-17 and the main investigator testified no pictures were taken of the victim, R. 209, 10-16, so no photos of the victim were ever taken, and this picture "exhibit 8" could have been taken any time, and it was prejudice to the appellant to help the solicitors theory of this case, and therefore appellants convictions should be reversed and remanded for a new trial without "exhibit 8" in the states case against appellant.

Conclusion

For the foregoing reasons, appellants convictions for CSC - second degree, and kidnaping should be reversed and remanded for a new trial.



Dylan Trey Foster
Pro-se for Appellant

This 20th day of July, 2023

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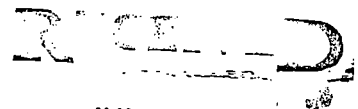
SC Court of Appeals

To Whom it may Concern,

You sent me a letter dated June 14th stating I had 45 days to reply a pro-se brief stating issues I wanted the Court to consider, I did not receive the letter for almost 2 weeks from June 14th and I am sending this out on July 20th 2023, within the 45 days, I have done the best of my ability with this brief, I am very disappointed with my representation by David Alexander, he did not help me at all, or raise any issue I talked to him about, if I did anything wrong in this brief please let me know, and give me some advice on how to do it right, thank you,

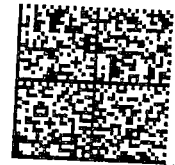
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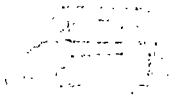


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