

State Of South Carolina
In The Court Of Appeals

Appeal from York County
Thomas A. Russo, Circuit Court Judge

In the matter of the case and treatment of
O'Bryan B. Whitlock
Appellant
Appellant case No: 2012-212021

Pro-Se Brief of Appellant
O'Bryan B. Whitlock
Appellant

O'Bryan B. Whitlock
7901 Farrow Rd
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JUL 22 2013

SC Court of Appeals

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Statement of Issue On Appeal

Did the trial court err in not setting aside the Jury's verdict and granting a directed verdict that Whitlock, was not a sexual violent predator when the state's independent hired expert's opinion contradicted the courts first expert opinion from the department of mental health, the chief psychologist said that Whitlock did not need to be committed to the adult sexual violent predator program?

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Statement Of The Cases

On April 1, 2003, the York County Family Court with the honorable H. Woods, presiding, found Juvenile O'Bryan B. Whitlock, guilty of three counts of criminal sexual conduct (CSC) with a minor after O'Bryan B. Whitlock pleaded guilty. O'Bryan B. Whitlock was an adjudicated delinquent and committed with an indeterminate period not to exceed past his twenty-first birthday, to the department of juvenile justice. (see page 2 order of Family Court prior to his release from the department of juvenile justice in 2011.) The State Attorney General office found probable cause to believe O'Bryan B. Whitlock, was a sexual violent predator. Whitlock proceeded to trial before the honorable Thomas A. Russo, and a jury. He was represented by Charles T. Brooks, and the state was represented by James G. Brooks. The jury determined that O'Bryan B. Whitlock, was a sexual violent predator. Judge Russo issued an order on May 15, 2012 committed O'Bryan B. Whitlock to the department of mental health for long term control and care. File a notice of appeal.

Argument

The trial court erred in not setting aside the jury verdict and granting a direct verdict, that O'Bryan B. Whitlock was not a sexual violent predator, when the two agencies were in conflict. The chief Psychologist from the department of mental health's opinion that O'Bryan B. Whitlock did not need to be committed to the SVP program.

At Whitlock's trial, the court appointed doctor expert testified that O'Bryan B. Whitlock should not be committed to the sexually violent predator program that he did not meet the legal criteria to be considered a sexual violent predator. (See page 115, 116 if transcript).

Dr. Musiek, also concluded that his personality disorder did not predispose him to commit future sexual violent offenses.

The state Attorney General's office, hired his own independent Dr. expert to perform a second evaluation on Mr. Whitlock. Dr. Kanard Mulbry, who was the second doctor that evaluated Mr. Whitlock. Dr. Mulbry's opinion was that O'Bryan B. Whitlock had a mental abnormality of antisocial personality disorder and testified that Whitlock did meet the criteria to be a sexual violent predator. **“Nevertheless Dr. Mulbry also admitted that juveniles make bad decision and do foolish things on a regular bases and often grow out of it.”** At the close of the state's case, defense counsel moved for a direct verdict because the state had not shown that Whitlock had a predisposition to re-offend.

Whitlock testified that he wanted to tell the jury that although they probably think the worst when they hear sex offenses, he was young when he was convicted of these charges, he is able now and has not committed any other sex offenses since. He made a mistake when he was young and he wanted to go to Job Corp or the United States Military and do something productive with his life.

A trial court should have granted a direct verdict when the evidence merely raised a suspicion that the accused was guilty.

State V. Brannon.

State V. Schrock

The judge should have set aside the verdict because the state only raised a suspicion that Whitlock met the criteria to be a sexually violent predator after Dr. Musick, a child psychologist from the department of mental health explained that the qualifying offense occurred when Whitlock was 12 years old and not 21 and had not re-offended (see trial transcript.).

State v. Thomas Simmons

State V. Kyle Crisco
State V. Ervin Shocks
State V. James Price

Cruel and unusual punishment
Double Jeopardy
Juvenile petitions
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Conclusions

Based on the above reasons, the order of the trial court should be reverse and O'Bryan B. Whitlock should be released.

Respectfully Submitted

O'Bryan B. Whitlock

**State Of South Carolina
In the Court Of Appeals**

Appeal from York County
Thomas A Russo Circuit Court Judge

In the matter of the care and treatment of O'Bryan B. Whitlock
Appellant

Appellant case No. 2012-212021

Petition for new counsel

My case has numerous legal issues and concerns that can warrant a new trial.

I would like for the court to appoint me a new appeal counsel

Respectfully Submitted

O'Bryan B. Whitlock

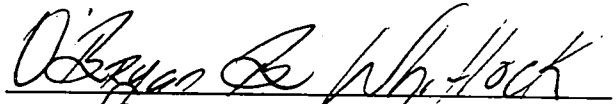
SOUTH CAROLINA COURT OF APPEALS

O' Bryan B. Whitlock.....Appellant

State of South Carolina.....Respondent

Proof of Service

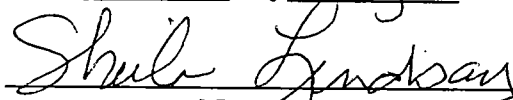
Bryan B. Whitlock, declares under penalty of perjury pursuant to U.S.C. 1746 that he mailed a copy of the enclosed Pro Se brief and a petition for new counsel to assistant attorney general Deborah R. J. Shupe, P.O. Box 11549, Columbia, South Carolina, 29211; South Carolina Court of Appeals, Jenny Abbot Kitchings, Clerk of Court, P.O. Box 11629, Columbia, South Carolina, 29211, by placing them in an envelope postage paid thereto and placing the stamped envelope in box at 7901 Farrow Rd. Bldg. 3 Columbia, SC 29203



O'Bryan B. Whitlock
7901 Farrow Rd. Bldg. 3
Columbia, SC 29203

Subscribed and Sworn before me

this 18th day July mo. 2013 year


Notary Republican

3/8/20

Commission Expires

CC: Ass. State Attorney General/
South Carolina Court of Appeals/
Clerk of Court

COPY



ALAN WILSON
ATTORNEY GENERAL

September 6, 2011

Cathy L. Weaver, Esquire
P.O. Box 10940
Rock Hill, South Carolina 29745

Re: In the Matter of the Care and Treatment of O'Bryan Broschaw Whitlock
Case No. 2011-CP-46-01081

Dear Mr. Weaver:

Enclosed please find a copy of the report of Dr. Jeffrey E. Musick, psychologist appointed by the Court, regarding your client. Note that he diagnosis him with anti-social personality disorder, but concludes that he is not likely to engage in acts of sexual violence in the future, and recommends that he not be found to be a sexually violent predator, as defined by S.C. Code Ann. Section 44-48-30.

This report is dated September 2, 2011, and as I read the amendments to the Sexually Violent Predator Act, effective May of 2010, the ninety-day clock for disposing of this case by trial or otherwise begins September 2.

S.C. Code Annotated Section 44-48-90 (C) effective May 2010, provides as follows: "Upon receipt of the evaluation issued by the court-appointed expert as to whether the person is a sexually violent predator pursuant Section 44-48-80 (D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination."

Based upon the above, please be advised that our Office is considering retaining an independent expert, but no decision has been made yet. I will let you know if that happens, and if it doesn't, the next step to take.

Should you have questions, please advise.

