

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-148

THE STATE

APPELLANT,

V.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

INITIAL REPLY BRIEF OF APPELLANT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
141 North Main Street
Sumter, South Carolina 29150
ATTORNEYS FOR RESPONDENT

RECEIVED

JAN 14 2014

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS I

TABLE OF AUTHORITIES II

ARGUMENT 1

THE STATE PROPERLY PRESERVED ITS OBJECTIONS TO THE
TESTIMONY OF OFFICER STAIR AND SGT. DRAKE AS IRRELEVANT AND
IMPROPER CHARACTER EVIDENCE 1

CONCLUSION 4

TABLE OF AUTHORITIES

Cases

Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939) 1

State v. Brannon, 388 S.C. 498, 697 S.E.2d 593 (2010) 1

State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) 1

State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (Ct.App.2010) 2

ARGUMENT

THE STATE PROPERLY PRESERVED ITS OBJECTIONS TO THE TESTIMONY OF OFFICER STAIR AND SGT. DRAKE AS IRRELEVANT AND IMPROPER CHARACTER EVIDENCE

Respondent asserts the objections raised by the State to the testimony of the two officers did not properly preserve the argument that the testimony was irrelevant and inadmissible character evidence. Appellant submits this contention is not supported by the record.

- A. The State did contend the testimony was inadmissible because it was irrelevant and improper character evidence.

In making the objection, Solicitor Finney stated as follows:

I believe counsel is attempting to illicit information **about character/conduct of the deceased** from the period of 2007. And **I do not think it is relevant to this hearing**. We do not think it is probative of the issue of the Duncan case. And we would strongly object, especially because this Court is sitting today as judge and jury, and therefore **any indication of some prior act is going to have some impact on your ability to make a decision** that needs to be made at the conclusion of Duncan Hearing.

(Tr. 133, ll 16-24) (emphasis added).

“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010) (citing State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003)). “Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.” Brannon, 388 S.C. at 502, 697 S.E.2d at 595-96 (citing Hubbard v. Rowe, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939)). Here, the State sufficiently argued that the testimony was improper because it was irrelevant and

was not proper character evidence for the court to consider. The trial court's explanation for why it was overruling the objections reflected that it understood the nature of the objections raised as being both on relevance grounds and on the propriety of the character evidence that was about to be presented. (Tr. 134-36). The State also renewed those objections in its Motion for Reconsideration. (Motion for Reconsideration, pp. 1-2).

B. The trial court did rule upon the objections, and the State took the actions necessary to preserve the issue for appeal.

Contrary to Respondent's assertions, the court did not reserve its ruling on the objections. The court overruled the objections, but noted that it would allow the State to address the issues again later if the State felt further argument was warranted. This is underscored by the colloquy between the court and the solicitor after the court overruled the objections:

For all those reasons, I am going to overrule your objection.

MR. FINNEY: Please note for the record, Your Honor, our continuing objection throughout his testimony. As we have noted, you are sitting as the Judge and the jury, and we are bound to your acknowledging all of the evidence you are about to hear.

THE COURT: All right. So, noted. And the Court appreciates not only the specifics of your objections, but the nuisance of why it concerns you, and the Court will receive the information and use it accordingly, and not for an inappropriate purpose.

But, nevertheless, that preserves your right to address this again before a final decision is made.

(Tr. 136, ll 4-17).

In light of the fact the State's objection was overruled, it could not move to strike the testimony. State v. Wilson, 389 S.C. 579, 584, 698 S.E.2d 862, 864

(Ct.App.2010)(“[W]hen an objection has been overruled, the objecting party has suffered an adverse ruling which can be appealed without any further allegation of error.”). Further, at the first instance that the State could renew its objections, it did. The State learned the court was going to rely upon the irrelevant and improper testimony of Officer Stair and Sgt. Drake when the court sent the parties its letter dated November 5, 2012. The State sent its letter reasserting its position that the testimony was improperly admitted on November 14, 2012. (Motion for Reconsideration, pp. 1-2). Altogether, Appellant submits these issues were properly preserved and should be considered by this Court.

CONCLUSION

For the foregoing reasons and the reasons stated in the Brief of Appellant, Appellant respectfully requests this Court vacate the trial court's Order Granting Immunity and Dismissing Criminal Charges and remand the case for a jury trial.

Respectfully submitted,

ALAN WILSON
Attorney General

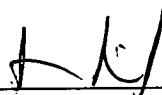
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
141 North Main Street
Sumter, SC 29150

ATTORNEYS FOR RESPONDENT

By: 

Alphonso Simon Jr. (Bar No. 74713)

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

January 14, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-148

THE STATE

APPELLANT,

v.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Initial Reply Brief of Appellant on Respondent by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record, S. Jahue Moore, Sr., Esq., Moore, Taylor & Thomas, P.A., P.O. Box 5709, West Columbia, South Carolina 29171; and to M. Brooks Biediger, Esq., Moore Taylor & Thomas, P.A., P.O. Box 5709, West Columbia, South Carolina 29171.

I further certify that all parties required by Rule to be served have been served.

This 14th day of January, 2014.



ALPHONSO SIMON, JR.

RECEIVED

JAN 14 2014

SC Court of Appeals

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305
ATTORNEY FOR APPELLANT



ALAN WILSON
ATTORNEY GENERAL

January 14, 2014

RECEIVED

JAN 14 2014

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *State v. Graham Franklin Douglas*
Appeal from Chesterfield County
Appellate Case No. 2013-000148

Dear Ms. Kitchings:

Enclosed for filing in your office is the original Initial Reply Brief of Appellant and Certificate of Service in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS/dmd
Enclosures

cc: S. Jahue Moore, Sr., Esq. (w/ two copies of encls.)
M. Brooks Biediger, Esq. (w/two copies of encls.)
The Honorable Ernest A. Finney, III, Solicitor 3rd Judicial Circuit
(w/copy of encls.)
Sandi Wofford, Victim Services (w/copy of encls.)