

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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FEB 18 2014

**SC Court of Appeals**

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Appeal from Abbeville County

Eugene C. Griffith, Jr., Circuit Court Judge  
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THE STATE,

RESPONDENT;

V.

JAMES ROSCOE SCOFIELD,

APPELLANT

APPELLATE CASE NO. 2012-213731

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INITIAL REPLY BRIEF OF APPELLANT  
\_\_\_\_\_

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### ARGUMENT IN REPLY

The trial judge erred in refusing to direct a verdict of acquittal for conspiracy to commit murder when the State failed to prove an agreement between Appellant and anyone to commit murder.

Respondent argues that the trial judge did not err in refusing to direct a verdict of acquittal for conspiracy to commit murder because a co-defendant, John Calvert, testified that, “He [Appellant] called me saying that he wanted me to help him try to murder, I think it’s, [fifteen year old’s] mom.” (Tr. p. 97, lines 23-24, Respondent’s initial brief p. 6). On cross examination, however, Calvert was questioned about the written statement in which he told police, “Ross Scofield called me Saturday and wanted me to bring knives. I did not ask questions and did. I was going to give them to him and go back home. Last night he was talking about killing her [fifteen year old] mother. I don’t know who is involved they would not say. They was just talking. I tried to stay out of it.” (Tr. pp. 102 – 106; Defendant’s Exhibit #1, R. p. \*\*). The reference to last night and talking about killing the mother was after Calvert and Appellant had been arrested. Calvert was asked, “The first time you knew about those knives was when you were sitting in jail. Is that fair to say?” (Tr. p. 105, lines 2-3). Calvert answered, “Yes, sir.” (Tr. p. 105, line 4). Calvert clarified that when Appellant asked him to bring knives, Calvert did not know why Appellant wanted him to bring knives. (Tr. p. 104, line 223 – p. 105, lines 1-5). On re-direct examination and consistent with his written statement to police, Calvert confirmed that he did not know what the weapons were for until after both he and Appellant had been arrested and were in jail. (Tr. p. 105, lines 11-16). Importantly, on re-direct the State asked, “Mr. Calvert, when Mr. Scofield called you and asked you to bring weapons, as you testified earlier, did he tell you what the weapons were for?” (Tr. p. 105, lines 11-13). Calvert answered, “Not until I was in jail.” (Tr. p. 105, line 14).

Respondent argues, "In the instant case, the jury was free to decide which version of events Calvert gave was the truth." (Respondent brief p. 7). Calvert, however, specifically denied knowing of any plan to kill anybody prior to his arrest. Through cross examination and later on re-direct, Calvert confirmed what he initially told police in his statement that he did not know what the weapons were for until after both he and Appellant had been arrested and were in jail. Calvert's initial testimony indicating that Appellant called and wanted help to murder the mother was based upon what Calvert allegedly learned at the jail **after** the arrest. Respondent's strained reading of Calvert's testimony on direct makes no sense in light of Calvert's specific testimony on re-direct that he did not know what the weapons were for until after he was in jail.

This is not a situation like in State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct.App. 2005), where the witness' sworn statement to the police, implicating defendant, contradicted his trial testimony. In Crawford the statement to the police constituted substantive evidence of the conspiracy. In the present case Calvert's statement to the police was consistent with his testimony on cross examination and on re-direct. Neither the statement to the police nor Calvert's testimony at trial constitutes substantive evidence of a conspiracy.

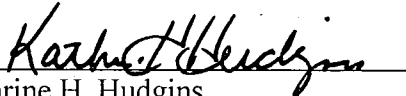
The present case is also distinguished from State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001) where a witness at trial denied making a statement to police about the defendant having a discussion about getting some money. As in Crawford the witness's statement to the police was evidence of the conspiracy although denied at trial. Again, Calvert's statement to the police was consistent with his testimony on cross examination and on re-direct. Calvert's initial testimony on direct indicating that Appellant called and wanted help to murder the mother was based upon what Calvert allegedly learned at the jail **after** the arrest and cannot be substantive evidence of a conspiracy.

Viewing the evidence in the light most favorable to the State, the judge erred in refusing to direct a verdict of acquittal for the conspiracy to commit murder charge because the State failed to prove an agreement between Appellant and Calvert or anyone else to commit murder. While the request to bring knives may have been suspicious, it does not prove an agreement to commit murder. As Calvert testified, at the time of the request by Appellant, Calvert did not know why Appellant wanted him to bring knives.

CONCLUSION

Based on the above argument, Appellant's conviction and sentence should be reversed.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT.

This 18th day of February, 2014.

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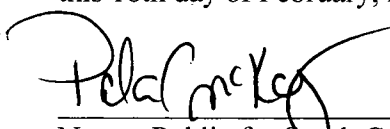
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also upon Mr. James Roscoe Scofield, 440 North Foster Ave Albany, Indiana 47320, this 18th day of February, 2014.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 18th day of February, 2014.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

(L.S.)