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MAR 13 2014

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Chester County

D. Craig Brown, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

BRENDA BRATSCHI,

APPELLANT

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INITIAL REPLY BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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## ARGUMENTS IN REPLY

### Issue 1: The Circumstantial Evidence in this Case was Insubstantial

The State admits no direct evidence of appellant's guilt exists in this case.<sup>1</sup> Brief of Respondent at 26. The State also admits that this Court's decision turns on whether the circumstantial evidence presented was "substantial." Brief of Respondent at 26. The prosecution did not present substantial circumstantial evidence and did not exclude other reasonable hypotheses.

The State attempts to distinguish appellant's case from other directed verdict cases by noting that, in each of those cases, the prosecution failed to present evidence placing the defendant at the scene of the crime. Brief of Respondent at 26. However, since the police admitted they had no evidence showing where or when Randy Bratschi died, the location of the crime scene in this case is unknown. Tr. 421, l. 19 – 422, l. 9. Tr. 172, l. 20 – 173, l. 4. Tr. 182, l. 24 – 183, l. 5. Tr. 580, ll. 7 – 23. Without any evidence of where the crime was committed, the State's attempt to distinguish the directed verdict cases cited by appellant fails. See, e.g., State v. Arnold, 361 S.C. 386, 389, 605 S.E.2d 529, 530-31 (2004).

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<sup>1</sup> The State concludes its factual narrative with a footnote which describes evidence irrelevant to the issue on appeal. Brief of Respondent at 20, n.2. Judge Brown properly suppressed a statement appellant gave to the police after two SLED agents lied to her and told appellant they were going to arrest her son for murder. April 4, 2012, Tr. 71, ll. 4 – 10. The SLED agents impliedly threatened appellant's son with the death penalty by telling appellant that she needed to save his life. April 4, 2012, Tr. 70, l. 3 – 77, l. 11. Judge Brown found that the agents had threatened appellant and suppressed her statement (which only indicated that she acted in self-defense). April 4, 2012, Tr. 155, l. 22 – 157, l. 14. The State failed to appeal that ruling. Therefore, as this Court well knows, consideration of any statement made by appellant is improper in this case. Appellant submits that the State's inclusion of this irrelevant matter in this appeal is an indication of its lack of confidence in the strength of the evidence used to convict appellant.

The State cannot distinguish the decision of State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984). In Schrok, the Supreme Court held that the State must show the accused was at the scene of the crime when it occurred. Id. Since the crime scene is unknown, it logically follows that evidence showing appellant was or was not at a particular place is insufficient to show she was at the crime scene. The State cannot overcome this glaring hole in its case against appellant.

Issue 2: The 911 Call Evolved into Testimonial Statements

The State submits that even though it is undisputed that the danger to Randy Bratschi had passed and the 911 operator began asking him questions investigating the incident, Randy Bratschi's subjective "frantic state" transforms his responses into nontestimonial statements. Brief of Respondent at 37. The focus here is not on Randy Bratschi, but on law enforcement. It is clear from the 911 recording that the operator is investigating the incident. State's Ex. 24. She asks multiple questions about whether he hit appellant with a hoe. State's Ex. 24. After long pauses, she asks him what were the reasons for the fight. State's Ex. 24. None of these questions related to any ongoing emergency.

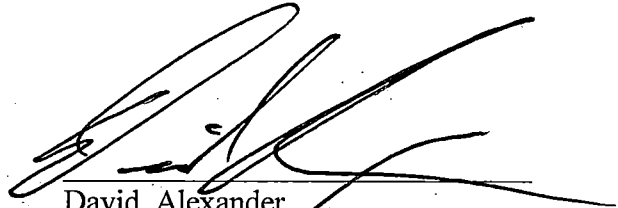
The operator knew (and told Randy Bratschi) that appellant was already at the police station. State's Ex. 24. Without any ongoing emergency or any unknown perpetrator on the loose, these questions served no purpose but to investigate the crime. See Crawford v. Washington, 541 U.S. 36 (2004); Davis v. Washington, 547 U.S. 813 (2006). The operator was not asking questions about Randy Bratschi's health or whereabouts. She was trying to discover information about an alleged crime. Therefore, these statements were testimonial and the Sixth Amendment bars their admission.

No harmless error analysis can apply in this case. The jury heard the voice of a dead man describing an assault. This evidence was highly prejudicial and likely aroused the sympathies of the jurors. Furthermore, the scant evidence produced against appellant means that any piece of evidence bearing any prejudicial value could have made the difference between a guilty and not guilty verdict. The State cannot show that the admission of this evidence was harmless beyond a reasonable doubt in this case where a directed verdict is appropriate.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT.

This 13<sup>th</sup> day of March, 2014.

STATE OF SOUTH CAROLINA

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MAR 13 2014

D. Craig Brown, Circuit Court Judge

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THE STATE,

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V.

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APPELLATE CASE NO. 2012-211980

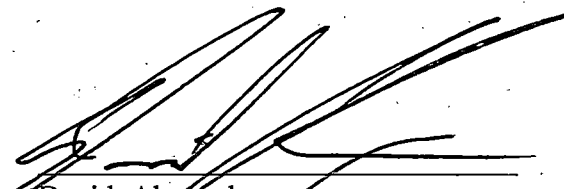
**SUPPLEMENTAL DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Respondent selectively designated portions of the Pre-Trial Hearing held April 4, 2012. In response to this designation, Appellant proposes the following portions of that hearing also be included in the Record on Appeal:

- (1) April 4, 2012, transcript pages 70-77.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 13, 2014



David Alexander  
Appellate Defender  
South Carolina Commission on Indigent Defense  
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THE STATE,

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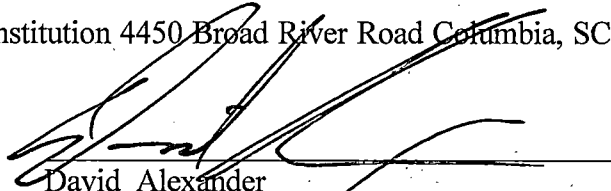
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BRENDA BRATSCHI,

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

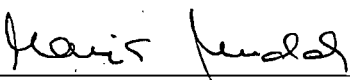
The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant and Supplemental Designation of Matter to be Included in the Record in the above referenced case has been served upon Kaycie S. Timmons, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Ms. Brenda Bratschi, #350569 Graham Correctional Institution 4450 Broad River Road Columbia, SC 29210, this 13th day of March, 2014.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 13<sup>th</sup> day of March, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023