

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2015-000907

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JUN 15 2015

SC Court of Appeals

The State,

Respondent,

v.

Jack Randall Moore,

Appellant.

INITIAL BRIEF OF RESPONDENT

Charles J. Hodge, SC Bar #002537
Hodge & Langley Law Firm, P.C.
Attorneys for Respondent
P.O. Box 2765
Spartanburg, SC 29304
Phone: (864) 585-3873
Fax: (864) 585-6485

Dated: June 12, 2015
Spartanburg, South Carolina

Other Counsel of Record: O. W. Bannister
Bannister, Wyatt & Stalvey, LLC
P.O. Box 10007
Greenville, SC 29603

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

**DID THE TRIAL COURT PROPERLY EXCLUDE THE OUT-OF-COURT
STATEMENT BY RICK COLEMAN FOR USE AS IMPEACHMENT
AGAINST ELLEN BRADLEY BECAUSE THE STATEMENT WAS
CLEARLY HEARSAY?**

STATEMENT OF THE CASE

On October 30, 2013, Jack Randall Moore, reported a refrigerated tractor trailer he had allegedly purchased was stolen. He was arrested for falsely reporting a stolen tractor in violation of S.C. Code Section 16-21-100 which states “a person who knowingly makes a false report of the theft or conversion of a vehicle to a peace officer or to the department is guilty of a misdemeanor.”

The original trial was held before Magistrate Charles Jones on May 14, 2014. During trial of that case, Appellant’s counsel began cross-examining witness Ellen Bradley from a statement made by the driver of the tractor. The prosecution objected and a sidebar was held. Although counsel for the Appellant was instructed not to ask questions from the statement, he resumed immediately. On redirect, the prosecution asked one question: “These questions that Mr. Bannister was reading, are you aware of an Affidavit executed that refutes everything that he asked?” An objection was posed by defense counsel at that time and a mistrial was requested. Judge Jones granted defense counsel’s request.

The second trial was held before Magistrate James B. Pasley on July 23, 2014. Once again, defense counsel attempted to use a statement made by a witness not present at trial to impeach the testimony of Ellen Bradley. Judge Pasley refused to allow the out-of-Court hearsay. Defendant Moore was found guilty and fined.

Moore filed his Notice of Appeal from the Magistrate Court on July 31, 2014. The appeal was heard before the Honorable R. Keith Kelly on March 3, 2015. Judge Kelly affirmed the conviction. A Notice of Appeal was filed with the S.C. Court of Appeals.

SUMMARY OF FACTS

Jack Moore allegedly purchased a refrigerated trailer belonging to Melvin Stewart in early October 2013. (2nd Trial Tr., p. 39) The tractor that hauled the refrigerated trailer was owned by Ellen Bradley. Bradley and Stewart had done business for many years. (2nd Trial Tr., p. 47) Stewart contracted cancer and was unable to drive the tractor. (2nd Trial Tr., p. 85) He secured a driver named Rick Coleman. (2nd Trial Tr., p. 86) A typical route for Bradley and Stewart's business would be to take a load to Washington state arranged through a broker and bring back another load to the East coast. (2nd Trial Tr., p. 84)

While Rick Coleman was dispatched to Washington state, Melvin Stewart had been picked up from the hospital by Jack Moore. Moore conveyed to trucking brokers that his trailer had been stolen. Bradley and Moore reached an agreement through an intermediary, Ronald Thompson, on October 24, 2013 to deliver the refrigerated trailer back to Moore. (2nd Trial Tr., p. 124) The tractor and trailer were already in Washington state so a broker arranged for a load of potatoes to be picked up in Idaho. The potatoes were then to be transported to Zebulon, North Carolina. From there, the refrigerated trailer would be delivered to Moore. (2nd Trial Tr., p. 91) On October 30, 2013, after the agreement had been reached for delivery of the trailer, Jack Moore filed a report with the Spartanburg County Sheriff's Department alleging the trailer had been stolen. (2nd Trial Tr., p. 40) When the driver arrived with the load of potatoes in Zebulon, North Carolina, he was detained by the authorities, arrested, and the tractor and trailer were confiscated. (2nd Trial Tr., p. 92)

After completion of his investigation, Spartanburg County Sheriff's Department officer, Bryan White, had Moore arrested on November 19, 2013 for falsely reporting a stolen tractor in violation of S.C. Code Section 16-21-100. (See Arrest Warrant for Jack Randall Moore)

On May 14, 2014, a trial was held before Magistrate Charles Jones. In a pre-trial conference a discussion was held between the attorneys for the parties and the Magistrate. The attorney for the defendant had attained a statement from the driver, Rick Coleman, which was disparaging towards one of the prosecution witnesses, Ellen Bradley. (See statement from Rick Coleman dated January 15, 2014) The prosecution had obtained an Affidavit from Mr. Coleman which refuted his previous statement. (See Affidavit of Rick Coleman dated February 5, 2014) In chambers with the Magistrate, both attorneys acknowledged the statements were clearly hearsay. The prosecution offered to have both statements come in or neither. This was not agreeable to defendant's counsel as he wished only for Coleman's first statement to come in. The Magistrate ruled the statements would not be allowed.

On cross-examination of Ms. Bradley during the first trial, defense counsel for Moore brought out Coleman's statement. He began reading the statement as a series of questions. The prosecution objected and defense counsel was admonished not to do that. He immediately began to do it again. (1st Trial Tr., pp. 78-80) On redirect, the prosecution asked Ms. Bradley if she was aware of an Affidavit which refuted the statements defense counsel had just read in front of the jury. (1st Trial Tr., p. 82) Defense counsel then made a motion for mistrial, which was granted. (1st Trial Tr., pp. 83-86)

The second trial was held on July 23, 2014 before Magistrate James Pasley. Defense counsel once again attempted to use the statement by Rick Coleman to impeach the testimony of Ellen Bradley. Magistrate Pasley denied defense counsel's request. (2nd Trial Tr., pp. 18-19)

The trial was held and Jack Moore was found guilty. (2nd Trial Tr., p. 209)

ARGUMENT

THE TRIAL COURT PROPERLY EXCLUDED THE OUT-OF-COURT STATEMENT BY RICK COLEMAN FOR USE AS IMPEACHMENT AGAINST ELLEN BRADLEY BECAUSE THE STATEMENT WAS CLEARLY HEARSAY.

Rule 801(c), S.C.R.E., defines hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

The statement of Rick Coleman procured by the defendant was made out-of-Court. Obviously, the defendant procured this statement in an effort to prove the truth of the matters asserted. It should be noted Coleman was paid by Moore for that statement. (See Affidavit of William R. Coleman, Jr. dated February 5, 2014.)

Moore argues he had the Constitutional right to confront Bradley as a witness against him under both the 6th Amendment of the U.S. Constitution and Article I, Section 14 of the S.C. Constitution. The prosecution does not dispute this. Moore exercised his right to confront Bradley in front of the jury.

Moore's argument that Rule 613, S.C.R.E., subsection (a) sets forth permission for Moore to question Bradley about the statement Bradley allegedly made to Coleman is misplaced. Ellen Bradley did not give the previous statement; Rick Coleman did. If Ellen Bradley had made the statement and signed it, certainly it would be appropriate for her to be confronted with it, but she did not. If the Court follows defendant's reasoning, any criminal defendant could pay a third party to issue a statement which disparaged a key witness for the prosecution whether it was true or not. It could be done in a murder case, a rape case, or any serious criminal case. The

ramifications would be enormous. There would be no such thing as hearsay; anything would come in. This, the prosecution submits, would be a ludicrous result.

The defense continues to push the argument that Rick Coleman's testimony is somehow a prior inconsistent statement of Ellen Bradley. Again, defense counsel's argument is misplaced. The inconsistent statements were from Coleman, not from Bradley. Coleman issued the original statement after being paid by Moore, and then recanted and issued a sworn Affidavit which described what really occurred. The second Magistrate, Judge Pasley, had an exchange with defense counsel and properly outlines why he did not rule Coleman's first statement could come in for impeachment purposes against Ms. Bradley:

BY MR. BANNISTER: That's what Judge Jones made the ruling on, that it was proper cross examination since there was a solid basis to ask her.

BY THE MAGISTRATE: And that basis is an out of court statement from a witness who's not going to be in court today?

BY MR. BANNISTER: Yes, sir. Absolutely.

BY THE MAGISTRATE: Well, I disagree with Judge Jones' ruling. I don't find that as a basis for bringing in that statement.

BY MR. BANNISTER: Based on the fact that I can't bring you some evidence on that now?

BY THE MAGISTRATE: Yes, sir. If you -- I mean, we're right here now and unless you can show me some supporting case law that says that this procedure is proper, I don't interpret the rule to allow you to bring in hearsay in your cross examination of a witness.

BY MR. BANNISTER: I understand your ruling, Judge, and I respectfully disagree.

BY THE MAGISTRATE: And it's on the record.

BY MR. BANNISTER: When we get to the point, for the purposes of the record, I will have to make a proffer out of the presence of the jury in this examination.

BY THE MAGISTRATE: We'll do that, although I'm not sure what -- again, if it's an out of court statement and you're going to ask her, in essence, to refute an out of court witness's statement, that's a backdoor hearsay. If it was an exception, if it's res gestae, if it was any type of exception, that would be different.

BY MR. BANNISTER: It's not an exception, Judge, to offering it for the truth that as a matter of certainty. It's to test this witness by cross examination as to whether she made the statement or not. And if I have a basis to ask her that, under impeachment of a witness, I ---

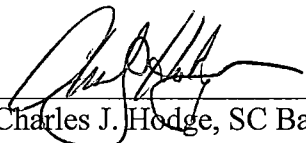
BY THE MAGISTRATE: But the basis is not -- the basis is hearsay. It's clearly a hearsay statement, and you're saying I can get it in as a basis for asking you about this hearsay. I don't find that as a basis for it. (2nd Trial Tr., pp. 17-19)

Judge Pasley had it right. He understood defense counsel was trying to get in “backdoor hearsay.”

If counsel for the defense truly believed William R. Coleman’s initial statement was accurate, he could have had him testify at trial. After all, the first trial was held on May 14, 2014, and the second trial was held on July 23, 2014. This gave the defense many weeks in order to obtain a video deposition or subpoena Coleman for trial. The defense declined to do this for the very apparent reason that his initial statement was bought and paid for and was a lie. (See Coleman’s initial statement dated January 15, 2014 and subsequent Affidavit dated February 5, 2014.)

CONCLUSION

The Magistrate Judge properly excluded William Coleman’s statement from impeaching Ellen Bradley as it was clearly hearsay. Accordingly, the prosecution prays this Court affirms the conviction.



Charles J. Hodge, SC Bar #002537
Attorney for the Prosecution/Respondent
HODGE & LANGLEY LAW FIRM, P.C.
P.O. Box 2765
Spartanburg, SC 29304-2765
Phone: (864) 585-3873
Fax: (864) 585-6485

June 12, 2015
Spartanburg, South Carolina

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PROOF OF SERVICE

The undersigned hereby certifies that the Initial Brief of Respondent was served on Appellant, by depositing a copy of it in the United States mail, postage prepaid, on June 12, 2015, addressed to its attorney of record, O. W. Bannister, Post Office Box 10007, Greenville, South Carolina 29603.

HODGE & LANGLEY LAW FIRM, P.C.



Tracy Pack, Paralegal for
Charles J. Hodge, SC Bar #002537
Attorney for Respondent
P.O. Box 2765
Spartanburg, SC 29304
Phone: (864) 585-3873
Fax: (864) 585-6485

Dated: June 12, 2015
Spartanburg, South Carolina

HODGE & LANGLEY LAW FIRM, P.C.

Attorneys at Law

229 MAGNOLIA STREET, P.O. BOX 2765

Spartanburg, SC 29304-2765

TEL. (864) 585-3873

FAX (864) 585-6485

CHARLES J. HODGE

E-MAIL: hodgecharles@hotmail.com

NBTA CERTIFIED CIVIL TRIAL SPECIALIST

T. RYAN LANGLEY

E-MAIL: RLangley@hodgelawfirm.com

LICENSED IN SOUTH CAROLINA AND GEORGIA

June 12, 2015

Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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JUN 15 2015

SC Court of Appeals

RE: **State vs. Jack Randall Moore**
Court of Appeals Case No.: 2015-000907

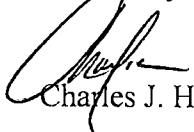
Dear Ms. Kitchings:

Please find enclosed original and one copy of Initial Brief of Respondent as well as the Respondent's Designation of Matter to be included in the Record on Appeal with regards to the above-referenced matter. Also, please find enclosed our Proof of Service.

I would appreciate your returning to me a clocked-in copy of the Initial Brief of Respondent and Respondent's Designation of Matter. A stamped, self-addressed envelope is enclosed for your convenience.

By copy of this letter, I am serving the Initial Brief of Respondent and Respondent's Designation of Matter upon opposing counsel.

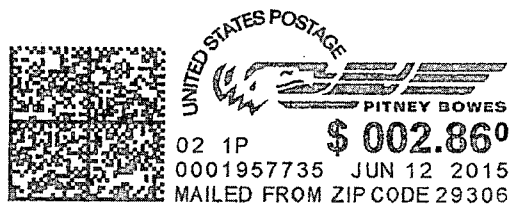
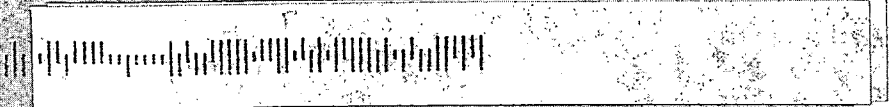
Yours very truly,


Charles J. Hodge

CJH/tp

Enclosures

cc: Mr. Bill Bannister
Attorney at Law
P.O. Box 10007
Greenville, SC 29603



HODGE & LANGLEY LAW FIRM, P.C.

Attorneys at Law

229 MAGNOLIA STREET

P.O. Box 2765

Spartanburg, South Carolina 29304-2765

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Jenny Abbott Kitchings, Clerk
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Columbia, SC 29211