

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

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DEC 08 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN ANDREW BIGGS,

APPELLANT

APPELLATE CASE NO. 2017-000199

INITIAL BRIEF OF APPELLANT

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Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to instruct the jury that a traffic accident does not give rise to a presumption that a violation of the law has occurred, since this was a correct statement of the law pursuant to S.C. Code § 56-5-6170 and it was particularly proper given the mysterious facts of what occurred in this case?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County Grand Jury for the offense of reckless homicide. R. *. His case was called to trial on December 12, 2016, before the Honorable J.C. Nicholson and a jury. John Kozelski and Tamara Van Pala represented appellant. Edward Corvey, III and Todd Williams represented the state. Tr. 1.

At the conclusion of the trial on December 14, 2016, the jury found appellant guilty. Tr. 297, ll. 2-8. Judge Nicholson sentenced appellant to ten years' imprisonment suspended upon the service of three years and probation for five years. Tr. 310, ll. 13-18.

This appeal follows.

ARGUMENT

The court erred by refusing to instruct the jury that a traffic accident does not give rise to a presumption that a violation of the law has occurred, since this was a correct statement of the law pursuant to S.C. Code § 56-5-6170 and it was particularly proper given the mysterious facts of what occurred in this case.

Introduction

This is a most unusual case where appellant's truck, without any explanation -- where drinking or drugs were not were ruled out by medical evidence -- inexplicably hit the decedent's Mustang from behind at about 100 miles per hour in downtown Charleston at four a.m. The solicitor argued in closing:

Mr. Kozelski said in opening and in closing that this was a tragic accident. One thing I can agree about is that it is a tragedy. Every single senseless loss of life is. I don't think anyone would ever question that. But what I disagree with a little bit is the way that Mr. Kozelski uses the phrase accident. I think the word accident is kind of the catch all that we apply to any car collision. Of course I used the word accident in the course of this trial, the officers used the word accident, the witnesses used the word accident.

I think in that way it's a little bit like Kleenex when referring to a tissue or a band aid when talking about a bandage. But this wasn't an accident. This was no fluke. This was no one off incident. This case is not an accident. When John Biggs decided to get behind the wheel of his car and travel 100 miles an hour down Rivers Avenue and kill Calvin Walker *for whatever reason which we'll never know it stopped being an accident and started being reckless homicide.*

Now a lot has been made about this doesn't make sense. A lot of excuses have been given and all those are is asking you to look away from that. Don't look at the facts. Don't look at the evidence. Don't look at what happened; speculate, conjecture. Invent something in your mind what may have happened rather

than what was proven to happen and what we know happened through the course of this trial.

Those sorts of excuses, those sorts of thoughts are red herrings. They are designed to get you to look away from what we are really talking about here. And those have been a lot of those opined to you and let's just take a minute and let's talk about a few. *And I think the most overall catch all that I've already touched on is that it doesn't make sense.* I agree; reckless behavior rarely does.

That rarely makes sense and beyond that other things you've heard is that nice blue collar guys don't do this. *I don't know why he did this but he did.* We all know and we've already been over that otherwise good people make mistakes all the time.

Tr. 266, l. 10 – 267, l. 24. (emphasis added).

Calvin Walker, Jr. was the son of the decedent. He was forty years old at the time his father was killed in this traffic accident. Tr. 65, l. 16 – 66, l. 22. Late night or very early morning on October 8, 2015, he received a call from his mother informing him that his father was having bad abdomen pains.

Walker lived in the same apartment complex, and he went by his parent's apartment to check on his father. He said his father, the decedent, decided to drive himself to Trident Hospital, which was not far from their apartment complex on Rivers Avenue. Tr. 68, ll. 2-20. His mother telephoned Walker shortly after that to tell him his father had been killed in a traffic accident. Tr. 68, l. 21 – 69, l. 10.

Robert Broadhead was at the Wild Wings Café on the patio with friends at the time of the early morning accident. He remembered a dark Silverado passing the Wild Wings “at a high rate of speed and that was about it.” Tr. 80, ll. 11-20. Broadhead did not see the accident down the street, but he remembered hearing a “loud crash. We immediately heard two horns and we started to walk that way.”

The accident occurred about a block away from the Wild Wings. Tr. 81, ll. 18-24. The truck -- where appellant was buckled into the driver's seat -- hit the decedent's Mustang from behind at a stop light. Broadhead recalled: "I don't recall hearing skid marks. I just remember hearing a loud crash and then like we just knew immediately that something bad had happened and walked down there and saw what we saw." Both drivers were nonresponsive and their heads were lying on the steering wheel horns. Tr. 86, ll. 9-14.

North Charleston police officer Benjamin Trask remembered coming to the scene of the accident. The pickup truck was in the wrong lane after it hit the Mustang from behind. As stated, neither the decedent nor appellant were responsive. Both vehicles caught on fire, and fire extinguishers were used to stop the fires. Tr. 105, l. 11 – 108, l. 5.

James Booker was with the MAIT unit that did the accident reconstruction. Tr. 128, l. 9 – 132, l. 21. He was admitted as an expert in collision reconstruction. Booker testified that he estimated the truck was travelling at between 98 miles an hour and 101 miles an hour at the time it hit the Mustang. Tr. 141, ll. 17-22. There was no attempted braking before the truck hit the Mustang from behind at the stop light. Tr. 143, ll. 20-22.

Todd Proctor was with the Coastal MAIT team. He said appellant had his seatbelt on, there was no attempted braking prior to the crash, but he nonetheless opined that appellant appeared to be "in control" of the truck. Tr. 150, l. 3 – 156, l. 4.

North Charleston police officer Anthony King testified that there were -- strangely -- skid marks following the collision, and that both vehicles spun around before they came to a stop. Tr. 173, l. 1 – 174, l. 25. King estimated that the truck was going 98 miles per hour, that the brakes worked, but there was no attempted braking before impact. Tr. 178, l. 25 – 196, l. 23.

Appellant was initially charged with felony DUI, but the medical report showed appellant had no alcohol or drugs in his system and that charge was dropped. King said although brakes on the truck worked there was no attempt to brake. He nonetheless opined that he could not find any evidence that appellant was not “in control” of the vehicle. Tr. 178, l. 25 – 196, l. 23.

The state presented evidence that appellant worked four days a week from 6:00 a.m. until 4:30 p.m. for Concrete Pipe and Precast. Tr. 199, l. 14 – 200, l. 11.

Appellant testified in his own defense. The truck belonged to his son, he was sure that he never driven as fast as the MAIT report showed, and he had no memory whatsoever of what happened before or during the accident. Tr. 222, l. 15 – 243, l. 15.

Request to charge

Defense counsel, given these strange facts, asked that the judge instruct the jury that “a traffic accident does not give rise to a presumption that a violation of the law has occurred.” Defendant’s Requested Jury Charge Number 1, Court’s Exhibit 2, R. *. The judge refused to give this instruction, stating the statute, S.C. Code § 56-5-6170, “applies to police officers, not juries. Its attempt to be in a civil concept is inapplicable.” Tr. 291, ll. 16-18.

Discussion

In pertinent part, S.C. Code § 56-5-6170 states that “No police officer in investigating a traffic accident shall necessarily deem *the fact that an accident has occurred as giving rise to the presumption that a violation of a law occurred.* Arrests and criminal prosecution for violation of this chapter shall be based upon evidence of a violation of the law.” Based upon the clear words of the statute, the judge erred by ruling it only applied in the civil context.

In State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), the Supreme Court reversed the defendant’s conviction because the trial judge refused to craft his instructions to meet the

applicable facts of the self-defense case. The Court noted that a defendant was entitled to act on appearances in a self-defense case, and Fuller was entitled to that applicable jury instruction. Further, Fuller was entitled to a charge that “words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense.”

The purpose of jury instructions is to enlighten a jury and to aid it in arriving at a correct verdict. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987), *citing* State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257 (1944).

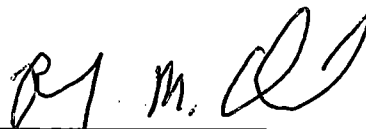
Here, it was agreed that no one will ever know what truly caused this traffic accident. It was suggested that appellant may have had a medical condition that caused him to lose consciousness with his foot on the accelerator. Again, alcohol and drugs were not a factor as conclusively shown by the medical evidence. The solicitor strongly urged, in essence, that appellant’s truck hit the Mustang from behind at a hundred miles an hour and that was reckless homicide *per se*. No other questions needed to be asked.¹

The instruction that a traffic accident does not give rise to a presumption that the driver violated the law was particularly apt in this highly unusual factual scenario. The judge erred by ruling the statute did not apply in a criminal case and by refusing to charge that statute. The jury needed to understand it could not presume guilt based upon the fact that there was a traffic accident. The judge had a duty to craft his instructions to meet the facts of the case, and he failed to do that in this case. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989); State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). Appellant should be granted a new trial.

¹ The judge’s remarks at sentencing, respectfully, showed he agreed with the solicitor that this was reckless homicide *per se*. Tr. 308-311.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the Charleston County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of December, 2017.

STATE OF SOUTH CAROLINA

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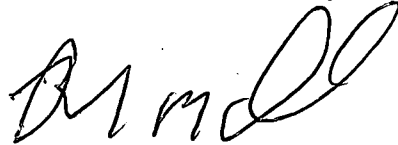
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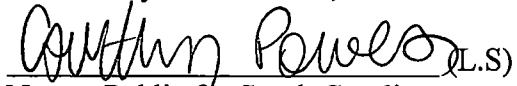
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on John Andrew Biggs, 4680 East Second Street, Peru, IN 46970, this 8th day of December, 2017.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of December, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.