THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith Jr., Circuit Court Judge

Case No. 2009-GS-30-1790

The State, ... Respondent,

vs.

Teresa Blakely ..... Appellant

FINAL BRIEF OF APPELLANT

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Questions Presented

Question I: Was the prosecution of Teresa Blakely in this matter a result of a vindictive prosecution and therefore the prosecution is barred by the due process clause of the Fourteenth Amendment to the Constitution of the United States of America and Article I, § 3 of the Constitution of the State of South Carolina?

Question II: Did the indictment for accessory after the fact to murder after the defendant had been acquitted of murder violate the due process clause of the Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America?

Question III: Can the State, in keeping with the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America, take inconsistent positions in two separate criminal proceedings against the same defendant?

Statement of the Facts

On September 28, 2007, the State indicted Teresa Blakely for the charge of murder. The charges arose out of the alleged involvement of Ms. Blakey in the murder of her husband Houston Fuller on July 16 2007.[1] The state alleged that she aided and abetted Paul Thomas Morris, Jr. to murder her husband. Mr. Morris actually committed the killing.[2] The State's theory was that Ms. Blakely helped plan the killing and was present aiding and abetting the commission of the crime.

The first trial was conducted over four days from May 26, 2009 until May 29, 2009. The jury deliberated over seven hours before arriving at its not guilty verdict. The testimony at that trial was the same as was presented at this trial. Ms. Blakely testified at her trial in 2009. She also gave a statement to the police. Her testimony at trial was the same as her prior statement. She denied planning to kill her husband. Mr. Morris was the brother of a friend of Ms. Blakely. According to Mr. Morris's statement, Mr. Fuller had made some derogatory statements about the sister of Mr. Morris and as a result, Mr. Morris vowed to avenge those statements by beating up Mr. Fuller. Mr. Morris went to the residence of Houston and Teresa Fuller at about 6 am on the day of the incident. When Mr. Fuller answered the door, Mr. Morris attacked him and placed him in a neck hold. Mr. Morris stated that he felt Mr. Fuller's neck crack. The cracking of Mr. Fuller's neck killed him. Ms. Blakely testified that she did not expect Mr. Morris to come by the house and attack Mr. Fuller and did not have an agreement

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[1] The State indicted Ms. Blakely under th name "Teresa Fuller." No reason was given for using her former name of "Blakely" in this indictment.

[2] Mr. Morris, after the acquittal of Ms. Blakely, entered a plea to voluntary manslaughter.

with Mr. Morris to kill her husband. She did testify that she helped Mr. Morris place the body of Mr. Fuller in the truck and helped run it off the road in an attempt to make the death look accidental.

After Ms. Blakely's daughter informed the police of what she observed at the house on the morning of Mr. Fuller's death, Ms. Blakely was questioned by the police and gave them the statement. Ms. Blakely was arrested on August 9, 2007 and remained in jail until she was acquitted on May 29, 2009. No new facts have been found since the trial of Ms. Blakely.

This case was tried before the Honorable Eugene Griffith, Jr. without a jury. The parties stipulated to the testimony of the investigating officer which was a summary of the testimony given at the earlier trial. Judge Griffith convicted Ms. Blakely of the charge of accessary after the fact. He sentenced her to 8 years suspended upon the service of 4 years with three years probation. She was given credit for the 22 months she spent in pretrial confinement on the murder charge.

Ms. Blakely filed her Notice of Intent to Appeal on July 26, 2011.

Argument

Question I

Was the prosecution of Teresa Blakely in this matter a result of a vindictive prosection and therefore the prosecution is barred by the due process clause of the Fourteenth Amendment to the Constitution of the United States of America and Article I, § 3 of the Constitution of the State of South Carolina?

The United States Supreme Court and the South Carolina Supreme Court have recognized that the State may not bring additional charges against an individual because they have invoked a constitutional right. *See*, *Blackledge v. Perry,* 417 U.S. 21 (1974); *Patrick v. State,* 349 S.C. 203, 562 S.E.2d 609 (2002). In this case Ms. Blakely exercised her right to a trial by jury on the murder charge. Because of her acquittal, the State has now elected, using the same facts, to further prosecute her for accessory after the fact.

As noted by the Fifth Circuit, "[I]f *Blackledge* teaches any lesson, it is that a prosecutor's discretion to re-indict a defendant is constrained by the due process clause." *Hardwick v. Doolittle*, 558 F.2d 292, 301 (5th Cir. 1977). When a prosecutor indicts for a charge that could have been included in the original indictment and a new indictment ensues, the defendant has made a prima facie case of a vindictive prosecution. *Hardwick*, at 301. The state then has the burden of proving the prosecution is not vindictive. Had the State desired, they could have originally indicted Ms. Blakely in a two count indictment charging her with murder and accessory after the fact. *See*, *State v. Woodard*, 38 S.C. 353, 17 S.E. 135 (1893). This matter would then have been resolved in one trial at a savings to the state and the defendant.

Instead, the state elected to make a tactical decision and presented only one charge to the jury in the apparent hope that if the jury were given the alternative of either convicting Ms. Blakely of murder or turning her loose, the jury would vote to convict her of murder. The State by bringing only one charge, sought to maximize its chances of successfully prosecuting Ms. Blakely for murder. Having made that tactical decision, the State should not be permitted to indict her for accessory after the fact when no new facts justify the subsequent indictment. Having gained what advantage they thought they could get from not charging her with accessory after the fact in the original trial, the due process clause prevents them from charging her again.

The State below argued that the correct standard is to determine if the prosecution was a selective prosecution and cited cases supporting its position. Rec. on App. at 8, ll 22-25 to 9 at ll 1-10. Ms. Blakely has never argued that she was being prosecuted for the exercising of her First Amendment rights or because of her race or religion. The State simply never responded to the argument that the second prosecution of Ms. Blakely was a vindictive prosecution. Because the State never addressed the vindictive prosecution argument, the State never gave a reason for not trying the two charges together. Nor did the State give any reason for bringing the second charge after the acquittal on the murder charge. Simply put, the State never attempted to deny the second prosecution was in fact vindictive. The response by the State to the allegation of vindictive prosecution, was they did not selectively prosecute Ms. Blakely.

The State did not ever attempt to explain to the court below why the two charges were not tried together. The State simply ignored the allegation of vindictive prosecution. Under these facts this Court should, as have other courts, presume the second prosecution was vindictive.

Question II

Did the indictment for accessory after the fact to murder after the defendant had been acquitted of murder violate the due process clause of the Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America?

The American Bar Association has issued standards for prosecutors involving the prosecution of cases where a prosecutor has prosecuted the defendant on one charge and then indicted him on another charge arising out of the same criminal episode. The Standards provide "A defendant who has been tried for one offense may thereafter move to dismiss any additional offense based upon the same conduct or the same criminal episode . . . ." ABA STANDARDS FOR CRIMINAL JUSTICE Chap. 13, *Joinder and Severance*, Standard 13-2.3 at 13-21 (1978). The Standards define "a single criminal episode" as occurring "simultaneously or in close sequence, and they occur in the same place or in closely situated places. A critical characteristic of single episode offenses, particularly in cases involving otherwise unrelated offenses or offenders, is the fact that proof of one offense necessarily involves proof of the others." *Id.* 13-1.2 Commentary at 13-10. The two charges in this case certainly fit that definition.

The Standards have several exceptions, none of which apply to this case. The comments to the Standards state "The standard is intended to protect defendants from successive prosecutions for unified conduct, particularly when the only reason for the several prosecutions is to 'hedge against an unsympathetic jury at the first trial, to place a hold upon a person after he has been sentenced to imprisonment, or simply to harass by multiplicity of trials.'" *Id.* commentary at 13-26. The Standards, or their equivalent, have been adopted by several states by either court

rule or statute. *See, e.g. People v. Mullenhoff*, 33 Ill.2d 445, 211 N.E.2d 744 (1965)(by statute) and *State v. Washington*, 101 Wash.2d 349, 678 P.2d 332 (1984)(by rule). While New York has a statute prohibiting a second prosecution for a related offense, the court in *People v. Williams*, 123 Misc.2d 165, 473 N.Y.S.2d 689 (1984)found that "basic fairness" was also a reason to bar the second prosecution. The court said "Even if this prosecution were not barred by double jeopardy concerns, principles of mandatory joinder and basic fairness compel dismissal of the Bronx indictment. No legitimate prosecutorial interest justifies subjecting a defendant to two prosecutions for a single criminal transaction when both New York and Bronx authorities were fully aware of the facts at the outset and where the entire transaction could have been prosecuted in the Bronx." *Id.* at174, 473 N.Y.S.2d at 695. The same principle of basic fairness applies in this case.

New Jersey, without a court rule or statute, adopted the principles set forth in the ABA standards in *State v. Gregory*, 66 N.J. 510, 333 A.2d 257 (1975). In so holding the court said "The common law was properly concerned with the protection of the defendant from government harassment and oppression by multiple prosecutions for the same wrongful conduct. It embodied the principle cherished by all free men that no person may twice be put in jeopardy for the same offense, a principle which fortunately continues undiminished in force and is firmly embodied in our federal constitution." *Id.* at 513, 333 A.2d at 258. In establishing the new rule the court noted "In the civil field we have long required that the entire controversy be disposed of in a single proceeding and we have not hesitated to bar a second proceeding by a party who unfairly withheld a fragment of his claim for a later proceeding. There would seem to be even more reason for this approach in the criminal field." *Id.* at 518, 333 A.2d at 261. In South

Carolina a plaintiff in a civil action under the principle of *res adjudicata* is not permitted to bring a second action for basically the same wrong. *Plum Creek Development Company, Inc. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999)

Recently the United States Supreme Court recognized standards by the American Bar Association that impose upon a defense lawyer the obligation to inform his client of the collateral consequences of his plea. The Court said "The weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation." *Padilla v. Kentucky*, 130 S. Ct. 1473, 1482 (2010). Just as the United States Supreme Court used the ABA Standards to impose an effective assistance of counsel obligation upon defense counsel, this Court should use them to impose a due process of law standard upon a prosecuting attorney to prohibit multiple prosecutions of a defendant under facts such as this.

Many states, including South Carolina and the Fourth Circuit, have applied the American Bar Association Standards in deciding criminal cases. *See, e.g. United States v. Russell*, 221 F.3d 615 (4th Cir. 2000); *State v. Stanley*, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005); *McDaniel v. State*, 278 Ark. 631, 648 S.W.2d 57 (1983); *Walker v. State*, 430 So.2d 418 (Miss. 1983); *McCray v. State*, 416 So.2d 804 (Fla. 1982); *People v. Jones,* 81 Ill. App.3d 724, 401 N.E.2d 1325 (1980); *State v. LaBranche*, 118 N.H. 176, 385 A.2d 108 (1978); *State v. Cochran*, 97 Idaho 71, 539 P.2d 999 (1975). This Court should apply the ABA Standards to this case. The requirement that the State bring all of its charges relating to a single criminal episode does not place an undue burden upon the State. In fact, it would require the State to use its court time more effectively by bringing all the charges in a related episode at one time rather than piece meal the charges over two or more trials. The benefit to the defendant is also obvious. The

defendant is able to dispose of all the charges from a single criminal episode at one time saving the defendant time, money and stress from successive trials.

Ms. Blakely believes that it is important for this Court to understand what this case is not about. Ms. Blakely does not contend that a second prosecution is barred under all circumstances. After a first prosecution, the State may find additional evidence that would justify a second prosecution on a different charge that would not be barred by double jeopardy. When additional evidence is found, the State can easily refute an allegation that the second prosecution is vindictive. If the State indicts a defendant on two charges in one indictment and the Defendant successfully moves to sever one of the charges, the State would not be prohibited from conducting a second trial.

As the trial judge noted, if the State were not satisfied with the result in this case it could continue to charge Ms. Blakely with any number of charges. For example, the State could charge her with obstruction of justice or false information to a police officer. With the large number of statutory crimes that cover a single factual episode, the State could easily continue to charge Ms. Blakely. If the legislature had passed a law making illegal the faking of an automobile accident or the moving of a dead body when the person knows a crime has been committed, Ms. Blakely could have been charged with those crimes. The list would be limited only by the imagination of the legislature. Under the State's theory, the fact that Ms. Blakely was convicted or acquitted, would not bar a second prosecution.

If the due process clause does not prevent a second prosecution for another crime arising out of the same episode after an acquittal, then a citizen has no protection against successive prosecution for any number of possible criminal charges that may arise out of the

single criminal episode. Simply put, how many bites of the apple does the due process clause permit the State to have?

Question III

Can the state, in keeping with the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America, take inconsistent positions in two separate criminal proceedings against the same defendant?

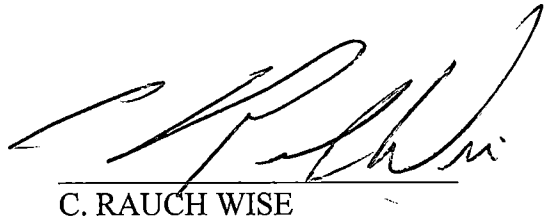
For the State to take inconsistent positions concerning the evidence in a case to attempt to secure two different convictions should be a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States of America and Article I, § 3 of the Constitution of the State of South Carolina. *See, Smith v. Groose*, 205 F.3d 1045 (8th Cir. 2000). While the *Smith* case involved inconsistent testimony by a witness, inconsistent argument by the State should bring the same result. The State should not be able to tell one jury that the only possible interpretation of the evidence is that the defendant is guilty of planning and participating in the murder and then in the next trial tell the jury the only possible interpretation of the evidence is that she only helped cover up the crime. While the State would be making both arguments were the two charges being tried together, the argument is not as disingenuous when the two charges are tried together. When tried together the State would be arguing alternative, reasonable interpretations of the facts to the jury and the jury would know the state is taking inconsistent positions.

As Justice George Sutherland said "The United States Attorney is the

representative not of an ordinary party to the controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice be done." *United State v. Berger*, 295 U.S. 78, 88 (1935). And justice is not done, when the State is permitted to argue in one case the defendant is guilty of murder and then under the same facts against the same defendant, argue the defendant is only guilty of accessory after the fact.

CONCLUSIONS

For the foregoing reasons this Court should reverse the conviction of Teresa Blakely on the ground that the prosecution of this matter violates the due process clause of the Fourteenth Amendment to the Constitution of the United States of America and Article I, § 3 of the Constitution of the State of South Carolina and direct that the lower court dismiss the charge of accessory after the fact to murder.



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