THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

RECEIVED
AUG 29 2018
SC Court of Appeals

Case No. 2013-CP-23-06522
Appellate Case No. 2016-000548

Madel C. Rivero, as Personal Representative
for the Estate of Lilia Lorena Blandin, ... Respondent,

v.

Sheriff Steve Loftis, in his capacity as
Sheriff of Greenville County . . . . Appellant.

RETURN

This return is filed pursuant to the Court's request. Respectfully, the petition for rehearing should be denied.

1. The rehearing petition mis-states Respondent's argument about the voir dire question.

Asking prospective jurors about whether they have been victims of criminal domestic violence is not the same thing as asking prospective jurors whether they have ever called the police on a spouse. The questions are objectively different.

The rehearing petition says the circuit court made a factual finding that the voir dire question was unambiguous and that such a finding binds this Court.

It is difficult to understand this argument. Categorizing a voir dire question as ambiguous or straightforward is not a finding of fact. The language of a voir dire question is printed verbatim in the transcript and not subject to *any* factual dispute. The reason trial judges get deference on factual issues is because factual issues involve determining witness credibility. *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998). There is no credibility or fact-finding involved in looking at a voir dire question's verbiage. The existence of ambiguity is uniformly a question of law. Cf. *Bordeaux v. State*, 410 S.C. 495, 765 S.E.2d 143 (2014) (scrutiny of sentencing transcript or sentencing sheet); *Harleysville Group Ins. v. Heritage Communities*, 420 S.C. 321, 803 S.E.2d 288 (2017) (examining contract language); *Penza v. Pendleton Station*, 404 S.C. 198, 743 S.E.2d 850 (Ct. App. 2013) (examining a deed).

Here, the key question is whether there was intentional concealment of information that would have disqualified the juror or been material to the complaining party's use of peremptory strikes. Both this Court and the circuit court gave correct answers to this question.

The circuit court correctly found the evidence in this record and in the public record demonstrated the juror in question was not a victim of criminal domestic violence. (R.p.6). This Court's opinion is equally sound because, as noted above, asking prospective jurors about whether they have been victims of criminal domestic violence is not the same as asking prospective jurors whether they have ever called the police on a spouse.

It is worth emphasizing that the circuit court made essentially the same point as this Court. The circuit court favorably cited *State v. Kelly* for the proposition that the question propounded to the venire would not have elicited the information the complaining party believed was intentionally concealed. (R.p.7). Thus, regardless of whether someone describes this voir

dire question as the circuit court described it or as this Court described it, the answer is the same. The juror in question was not a victim of criminal domestic violence and Appellant should have requested a different question on voir dire if the desired information was whether any member of the venire had ever called the police on his or her spouse. The record does not show any intentional concealment. This Court was right to affirm.

2. The rehearing petition incorrectly posits that this Court has reversed the circuit court.

Respondent does not follow the argument that this Court has reversed the circuit court. This Court affirmed the circuit court's judgment against Appellant. The Court's use of Rule 220 was plainly proper.

Respondent also does not follow the argument that she should have appealed the circuit court's decision. The circuit court entered a judgment of monetary damages in Respondent's favor. Then, the circuit court denied Appellant's motion to set that judgment aside. Respondent was not aggrieved by either decision. Multiple authorities confirm only an aggrieved party can appeal. S.C. Code Ann. § 18-1-30; Rule 201(b), SCACR.

An appellate court is free to affirm even though it disagrees with the circuit court's reasoning. In *Potomac Leasing Co. v. Otts Market*, this Court explained "a right decision based upon a wrong ground will be affirmed" and that the circuit court's reasoning is not binding on the appellate court "if the record discloses a correct result." 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987). The Supreme Court has said the very same things. *State v. Goodstein*, 278 S.C. 125, 128, 292 S.E.2d 791, 793 (1982). This Court could completely disagree with the circuit court's analysis. As long as the record supports the judgment, the judgment would be affirmed.

3. The petition continues to wrongly insist that a further hearing was required beyond the hearing the circuit court conducted for the purpose of assessing whether there had been any juror misconduct.

Appellant has repeatedly argued the circuit court was required to hold an evidentiary hearing to assess whether the juror intentionally concealed that she had called the police after a dispute with her husband.

To be clear, the circuit court held a hearing on this. The circuit court explained in its order that it reviewed the police report, the tape of the 9-1-1 call, the transcript of the 9-1-1 call, and the affidavits from the responding police officers. (R.p.6). Later, the circuit court determined no *additional* evidentiary hearing was necessary after it reviewed "all of the materials submitted by both parties." (R.p.7).

In an opinion issued this past April, this Court declined to adopt the approach that "the mere allegation of misconduct mandates a full-blown adversarial hearing." *State v. Tucker*, 423 S.C. 403, 414, 815 S.E.2d 467, 472 (Ct. App. 2018). That decision is not an outlier; other cases have involved variations of this same argument. *Lynch v. Carolina Self Storage Centers*, 409 S.C. 146, 159 n.2, 760 S.E.2d 111, 119 n.2 (Ct. App. 2014); *Long v. Norris & Assocs.*, 342 S.C. 561, 574, 538 S.E.2d 5, 12 (Ct. App. 2000). As in those cases, Appellant cannot demonstrate the circuit court abused its discretion in conducting a hearing and declining Appellant's request to haul the juror into court. The circuit court believed it was unnecessary to do so. That conclusion is sound.

4. There is ample evidence of causation-in-fact.

It is common sense and well-documented that domestic disputes quickly become violent and consistently escalate. This is precisely why South Carolina has a mandatory investigation

and arrest statute that specifically references a gross negligence standard for liability. See S.C. Code Ann. § 16-25-70(I). Avery Blandin threatened to kill his wife. He did it the next day.

There is no open-ended duty to protect victims of domestic violence, but when an abuser injures a family member soon after the police failed to arrest the abuser, Respondent believes a reasonable jury is justified in finding causation. Many legislatures enacted "mandatory arrest" statutes precisely because of the historical resistence to enforcing domestic violence laws. Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, but Is It Enough?*, 1996 U. Ill. L. Rev. 533 (1996). Courts in other jurisdictions have recognized that liability may be imposed on law enforcement for violating those laws. See *Calloway v. Kinkelaar*, 659 N.E.2d 1322, 1328 (Ill. 1995) (recognizing liability in Illinois and citing cases from New York and Pennsylvania). These statutes are useless if a plaintiff must definitively prove an arrest would have made it impossible for the abuser to kill the victim.

The police officers' failure to arrest Mr. Blandin may have emboldened him. The record suggests it did precisely that. There was testimony at trial that he taunted his wife and her mother via a text message and phone calls as they were driving away from the encounter with the officers. (R.p.531, line 9 - p.532, line 13).

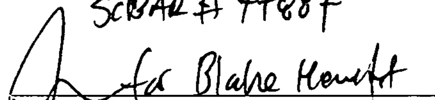
On the other hand, getting locked up may have knocked sense into Mr. Blandin. It almost certainly would have prevented him from murdering his wife at her place of employment the next day.

This issue—causation-in-fact—is a factual issue. Appellant was entitled to argue causation to the jury, but the jury was not obligated to agree with Appellant's argument.

CONCLUSION

For the reasons stated here and in the prior briefing, the Court should deny the petition for rehearing.

Respectfully submitted,



August 29, 2018

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Return to Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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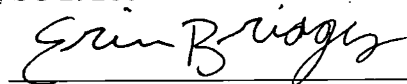

August 29, 2018 Erin Bridges

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August 29, 2018

<u>VIA HAND DELIVERY</u>
The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
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SC Court of Appeals

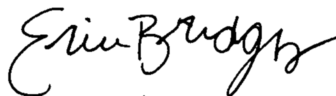
Re: Madel Rivero v. Sheriff Steve Loftis
Case Tracking No. 2016-000548

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the *Return to Petition for Rehearing* in reference to the above matter. I have also enclosed a proof of service of this document on counsel for the Appellant. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges
Paralegal to Blake A. Hewitt
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Enclosures
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