

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

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APR 23 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRENDA BRATSCHI,

APPELLANT

APPELLATE CASE NO. 2012-211980

FINAL REPLY BRIEF OF 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.¹ 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. R. 369, l. 19 – 370, l. 9. R. 121, l. 20 – 122, l. 4. R. 131, l. 24 – 132, l. 5. R. 507, 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).

¹ 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, R. 27, 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, R. 26, l. 3 – 33, 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, R. 104, l. 22 – 106, 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,



David Alexander
Appellate Defender

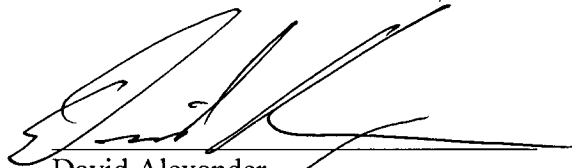
ATTORNEY FOR APPELLANT

This 23rd day of April, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 23rd, 2014



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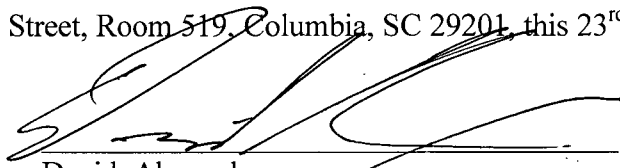
V.

BRENDA BRATSCHI,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Donald Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of April, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 23rd day of April, 2014.

Rhonda Denise Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021