

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Apr 21 2020
SC Court of Appeals

Appeal From Laurens County
Hon. Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2017-001103

The State,

Respondent,

v.

Brenda L. Roberts,

Appellant.

RETURN TO PETITION FOR REHEARING

On March 11, 2020, this Court correctly affirmed the trial court's decision admitting written statements finding that the trial court gave a proper limiting instruction which was not challenged by Appellant. See State v. Roberts, Op. No. 2020-UP-072 (S.C. Ct. App. filed March 11, 2020). Appellant has filed a Petition for Rehearing and this Court requested a return from the State.

The trial judge's limiting instruction eliminated any potential prejudice towards Appellant because his statement made clear that Bowers' statement related only to his conduct and potential culpability in the murder and Bowers' statements should not be viewed as substantive evidence of Appellant's guilt. Defense Counsel requested a limiting instruction, received one, and never offered any commentary expressing that the limiting instruction was flawed in any way. The trial judge specifically stated, "Obviously this testimony should not be received by you in any negative way as it relates to [Appellant]." R. p. 127. The trial judge also

indicated that jurors were nodding their heads in assent as he read the limiting instruction. R. pp. 126-27.

It is important to note, and this Court correctly found, that Appellant specifically requested that a limiting instruction be given and, after the limiting instruction was given to the jury, Appellant **never** offered any objection to the instruction or alleged that the remedy was insufficient to cure any potential prejudice to Appellant. Thus, as this Court concluded, Appellant's argument is not properly preserved for appellate review because Appellant requested a limiting instruction, got what she asked for, then failed to allege that the limiting instruction was insufficient in any way. See State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 615 (Ct. App. 2012) (noting the law assumes a curative instruction will remedy an error; therefore, failure to object to the sufficiency of that charge renders the issue waived and unpreserved for appellate review); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999) (“Because a trial court’s curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review.”).

Additionally, the State relies on its Final Brief of Respondent for all other arguments related to the merits of the appeal.

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

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BY: 

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ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Return to Petition for Rehearing on **Kathrine H. Huggins** by email at the address provided to AIS.

I further certify that all parties required by Rule to be served have been served.
This 21st day of April, 2020.



CAROLINE COLLINS
Administrative Coordinator
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Caroline Collins

From: Caroline Collins
Sent: Tuesday, April 21, 2020 11:40 AM
To: 'Hudgins, Kathrine'
Cc: William Blich; 'Stock, Chris'
Subject: The State v. Brenda L. Roberts (2017-001103)
Attachments: ROBERTS Brenda - Return to Petition for Rehearing - 2017-001103 (02261784xD2C78).PDF

Good Morning Ms. Hudgins,

Attached please find a copy of the State's Return to Petition for Rehearing in the State v. Brenda L. Roberts (2017-001103). This document will be submitted to the Court of Appeals through the AIS system.

If you will, please reply to confirm receipt of this email.

Thank you!

Caroline Collins

Administrative Coordinator
South Carolina Attorney General's Office
P: (803) 734-3723

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