

Summary of SC94226, *State of Missouri v. Brenda Churchill*

Appeal from the Monroe County circuit court, Judge Rachel Bringer Shepherd
Argued and submitted October 1, 2014; opinion issued February 3, 2015

Attorneys: Churchill was represented by Amy M. Bartholow of the public defender's office in Columbia, (573) 882-9855; and the state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman appeals her conviction for perjury on the basis of false testimony she gave – after stating she wanted to be represented by counsel – at a hearing to determine whether her son should be placed in protective custody. In a 6-1 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the trial court's judgment. The woman had no constitutional right to counsel at the protective custody hearing, and it is unlikely she was entitled to counsel by statute. Even if she were, however, she did not have the right to delay the hearing or to frustrate the hearing by knowingly giving false testimony. The trial court did not err in using her sworn but false testimony from that hearing as evidence in her perjury trial, and the evidence is sufficient to support the woman's conviction.

Judge George W. Draper III dissents without opinion.

Facts: Brenda Churchill had six children removed from her home and her parental rights terminated. When the juvenile office received information that she had a seventh child living with her – a 5-year-old boy – it filed an emergency petition seeking protective custody of the child pursuant to state law. Churchill was served with a summons to appear the next day at a hearing regarding the petition and to bring the boy with her. She appeared at the hearing, but she did not bring a child with her. At the hearing, Churchill's oldest daughter testified she had seen a child at Churchill's home who appeared to live there. Churchill's father testified that the child was living with Churchill and that, although he first believed the child was his granddaughter's son, he later learned that his granddaughter could not have children and that the child was Churchill's son. When the juvenile officer called Churchill to testify, she stated several times she wanted legal counsel. The court advised her that the hearing was preliminary, that no final determinations would be made then and that Churchill could have counsel at a later time. Churchill reiterated she wanted counsel but ultimately testified that she did not have a child – her son or otherwise – living with her and that any child in her home was her oldest daughter's son. The court told Churchill that, if she could not afford an attorney, it would appoint one to represent her, but when it ordered her to produce the child, she said there was no child. The court explained that, if she was not being truthful, she would be subject to perjury charges. Churchill reiterated there was no child. About two weeks later, Churchill and her attorney surrendered her 5-year-old son to the juvenile officer's custody. The state charged Churchill with perjury based on the false testimony she gave about her son's existence during the protective custody hearing. She moved to suppress that testimony on the ground that the hearing violated her constitutional rights to counsel and against self-incrimination. The trial court overruled Churchill's motion. She

ultimately was found guilty of one count of perjury and was sentenced to four years in prison. Churchill appeals.

AFFIRMED.

Court en banc holds: (1) The trial court did not err in using Churchill's sworn – but false – testimony from the protective custody hearing to convict her later of perjury.

(a) Churchill had no constitutional right to counsel at the protective custody hearing. By their express terms, the federal and state constitutional rights to counsel are limited to criminal prosecutions. The protective custody hearing, however, was a civil proceeding in which these constitutional guarantees do not apply. Similarly, because Churchill was not at risk of being imprisoned based on the outcome of the protective custody hearing itself, she had no constitutional due process right to counsel. A risk of being sentenced to prison for committing perjury is present any time any witness gives sworn testimony in any case and does not give rise to a due process right to counsel.

(b) Churchill had no clear right to counsel under state statutes or rules. The hearing was an initial hearing to determine whether there was a juvenile in need of care and treatment and, if so, whether state custody was warranted. It is not the same as a hearing to terminate parental rights, nor was Churchill even a “party” to the proceeding.

(c) Even assuming, however, that Churchill had a statutory right to be represented at the initial protective custody hearing, the right to be represented at a hearing is not an absolute right to delay the proceeding until counsel is secured. The court has discretion whether to proceed and was under a statutory obligation to conduct the hearing within three days of the juvenile officer's request. Moreover, as the court repeatedly explained to Churchill, the hearing's purpose was not to determine her rights but to determine only whether the child existed, where he lived and whether the court should take him into protective custody until a final disposition could be made. Under these circumstances, the court did not abuse its discretion in proceeding with the hearing despite Churchill's request for delay.

(d) The trial court did not err in using the false testimony she gave during the protective custody hearing as evidence in her later perjury trial. Even if the court had erred in proceeding with the hearing despite Churchill's requests for delay to obtain counsel, that error did not relieve Churchill of her oath and obligation to tell the truth, the whole truth and nothing but the truth. She told the court that she had no children living with her and that the child alleged to be her son did not exist. Taken at her word, therefore, she was neither a parent with a statutory right to counsel nor an indigent custodian entitled to have counsel appointed. She was not entitled to frustrate the hearing by knowingly giving false testimony.

(e) Churchill's claim that the trial court's use of her hearing testimony during her perjury trial violated her constitutional protection against self-incrimination fails. She never raised this issue during the protective custody hearing. Even if she had, that protection is

a right to remain silent, not a right to testify falsely. The privilege applies only to a statement that constitutes an admission about a crime, not to a statement constituting a criminal act itself. Even when there is no right to decline to answer, the Fifth Amendment grants no privilege to commit perjury.

(2) There is sufficient evidence supporting Churchill's perjury conviction. A person commits perjury if she knowingly testifies falsely about any material fact in any official proceeding before any court. Churchill concedes the protective custody hearing was an official proceeding and that she knowingly gave false testimony at that hearing. Her false statement was about a material fact. A material fact is one that either could or did have a substantial effect on the course or outcome of the proceeding. The fact about which Churchill testified was whether her son existed, which was material to the outcome of the initial protective custody hearing – without the existence of a child, the court had no jurisdiction to act and no juvenile to protect with its custody. That she later produced her son to the juvenile officer is not a retraction, which literally requires taking back the false testimony before the falsity of the statement is exposed. Churchill's delivery of her son to the juvenile officer was not testimony, and her statement's falsity was exposed long before she admitted it by producing her son to the juvenile officer. Regardless, Churchill never raised the issue of retraction to the trial court, either before or after her trial, and the trial court cannot have erred in refusing to credit a defense she did not assert.