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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Appellate Case No. 2021-000569

The Honorable Diane S. Goodstein, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Muanah A. Fortune, Jr.Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENTS

- I. **The trial court erred when it denied defense counsel's request to have Fortune's family physically present inside the courtroom because it denied Fortune his right to a public trial.**

Respondent argues Appellant was not denied his right to a public trial when his family was excluded from his trial (the victim's family was not). Respondent's argument completely disregards the existing United States Supreme Court precedent relating to open courtrooms and additionally ignores the fact that the State could have delayed Appellant's trial until after the COVID pandemic was under control to accommodate Appellant's substantial Constitutional rights to a public trial. Respondent, in fact, fails to even acknowledge that the right to a public trial is a right that belongs to a defendant ("Moreover, the general purpose of a public trial is to ensure a just prosecution, not abide the comfort of the defendant." Respondent's Brief, p. 13). Just as the victim's family had a right to be present at the trial under our state victim's bill of rights, the federal Constitution guaranteed Appellant's right to have his family in the courtroom to observe the proceedings. The trial court's decision to exclude Appellant's family from the courtroom would have left the jury with the impression that Appellant's family lacked interest in his case and welfare. The state, after all, introduced the jury to the victim's family who were sitting the courtroom! Tr. 197. And there is a racial component to this issue that was not argued below but nevertheless should be considered by this Court—Appellant's family and supports are African-American and the victim's family is white. The trial court's decision to remove Appellant's family from the courtroom resulted in removing Appellant's

African-American family members from the courtroom in which they had a right to be present. The image of this disparate treatment undermines public confidence in our government institutions. Respectfully, this Court should reverse Appellant's conviction and grant him a new trial.

II. The trial court erred when it failed to grant defense counsel's motion for a mistrial when prejudicial evidence was admitted to the jury without establishing proper chain of custody.

Appellant's argument is properly preserved for this Court's consideration. Respondent's brief even concedes that the arguments were made to the trial court and that the court took the issue under advisement. ("The record shows that following the arguments regarding Appellant's motion for mistrial the court took the matter under advisement over the lunch break", Respondent's Brief, p. 15). The issue was fairly presented to the Court who took it under advisement and thus considered the issue. Clearly, the court denied the motion. This is all that South Carolina's error preservation rules require, and this Court should address Appellant's claim on the merits.

III. The trial court judge erred when she allowed the charge of "hand of one is the hand of all" because the State's evidence to support the jury charge was insufficient to warrant the charge.

For the reasons argued in the initial brief, Appellant asserts the evidence adduced at trial was insufficient to allow the issue to be submitted to the jury.

CONCLUSION

Respectfully, Appellant is entitled to a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Counsel hereby certifies she has served a copy of this reply brief on W. Joseph Maye of the South Carolina Attorney General’s Office via email at jmaye@scag.gov on this date, September 12, 2022.

/s/ Elizabeth Franklin-Best

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