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Dec 08 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFERY TRUESDALE,

APPELLANT

APPELLATE CASE NO. 2022-000123

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial judge erred in refusing to excuse the jury and declare a mistrial when some members of the jury observed Appellant in handcuffs, a belly chain and an ankle chain while being transported to the courtroom.4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

<u>Chapman v. California</u> , 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)	5
<u>Deck v. Missouri</u> , 544 U.S. 622, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005)	5
<u>State v. Cassel</u> , 48 Wis.2d 619, 180 N.W.2d 607 (1970)	4, 5, 6
<u>State v. Dial</u> , 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013).....	3
<u>State v. Johnson</u> , 422 S.C. 439, 812 S.E.2d 739 (Ct. App. 2018).....	5
<u>State v. Moore</u> , 257 S.C. 147, 184 S.E.2d 546 (1971)	4, 5, 6
<u>State v. Rowlands</u> , 343 S.C. 454, 539 S.E.2d 717 (Ct. App. 2000).....	3
<u>State v. Wiley</u> , 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010).....	3, 6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to excuse the jury and declare a mistrial when some members of the jury observed Appellant in handcuffs, a belly chain and an ankle chain while being transported to the courtroom?

STATEMENT OF THE CASE

In October of 2021, the Fairfield County Grand Jury indicted Appellant, Jeffrey Ross Truesdale, Sr., for domestic violent of a high and aggravated nature, indictment #2021-GS-20-0418. On November 29, 2021, Appellant proceeded to jury trial before the Honorable Keith Kelly. Michael Laubshire represented Appellant at trial. Julie Hall prosecuted the case. the jury found Appellant guilty. Judge Kelly sentenced Appellant to twenty (20) years in prison. A motion for new trial was filed and denied on February 2, 2022. A timely notice of intent to appeal was served on February 3, 2022. This appeal follows.

STANDARD OF REVIEW

A trial judge's decision denying a mistrial will be reversed on appeal if the denial amounts to an abuse of discretion. State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). “Whether a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge.” Id. at 457–58, 539 S.E.2d at 719 (internal quotations and citations omitted).

Although the decision to grant or deny a mistrial is within the sound discretion of the trial court, the appellate court must reverse the ruling if the decision was an abuse of discretion amounting to an error of law. State v. Dial, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013) (citing State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010)).

ARGUMENT

The trial judge erred in refusing to excuse the jury and declare a mistrial when some members of the jury observed Appellant in handcuffs, a belly chain and an ankle chain while being transported to the courtroom.

The jury found Appellant guilty of domestic violence of a high and aggravated nature against his wife Stephanie Truesdale. Video surveillance from Behavioral Health Services captured the incident where Mrs. Truesdale was struck by Appellant's vehicle. At the start of the trial the judge heard a sidebar in regard to Appellant being seen by the jury pool in handcuffs, a belly chain, and an ankle chain. (R. p. 227, lines 6-9). Appellant later placed the issue on the record. (R. pp. 227-229). At this time Appellant testified that:

They did bring me up on the elevator because of the ankle things hurting my feet or whatnot. They stopped me right here, behind this door, which if you look from that door, where the jury was sitting was straight in the room. Only reason I seen the jury is when they were talking the leggings off my legs and I looked back, I was looking. And I could tell you the jurors, and I know they seen men and they were looking dead at me when they took all the restraints off of me. But they were in the room with the door open right there, behind this straight back.

(R. p. 230, lines 5-15). A bailiff who was sitting outside the jury room testified that, "I saw him with the chains, but I didn't see him when they took them off. When he went through that door, I didn't pay no attention to him." (R. p. 234, lines 6-9). The judge took the matter under advisement. (R. p. 235, lines 14-16).

Later, the judge denied the motion for a mistrial citing State v. Moore, 257 S.C. 147, 152, 184 S.E.2d 546, 549 (1971). (R. p. 294, line 16 – p. 295, lines 1-10). The judge noted specific language in Moore citing State v. Cassel, 48 Wis.2d 619, 180 N.W.2d 607 (1970). In Moore the South Carolina Supreme Court wrote:

In State v. Cassel, above cited, we find the following:
'We think that when a jury or members thereof see an accused outside the courtroom in chains or handcuffs the situation is psychologically different and

less likely to create prejudice in the minds of the jurors. Whether an accused should be in chains and handcuffs outside the courtroom is a matter for the sheriff or the police to determine since such custodian is responsible for the safekeeping and safe transportation of the accused. The record need not show restraints were warranted before and after the accused's appearance in the courtroom. People normally expect to see a prisoner under some restraints in situations where he is able to escape if not in restraints. * * *

Apart from the statement of the appellants' counsel, the record contains no proof that the aforesaid incident prejudiced the minds of the jurors against the appellants.

257 S.C. at 152–53, 184 S.E.2d at 549 (1971). The trial judge erred in denying the motion for a mistrial.

The trial judge's reliance on Moore is misplaced. Both the Moore case and the Wisconsin case cited in Moore, Cassel, were decided before Deck v. Missouri, 544 U.S. 622, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005). In Deck the United States Supreme Court wrote, "Thus, where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained.' Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)." 544 U.S. at 635, 125 S. Ct. at 2015–16. Deck v. Missouri involved the issue of court ordered shackles during the penalty phase of a capital trial. While the present case involves the jury viewing Appellant in restraints during transport, not court ordered and not in the courtroom, the State should still be required to prove beyond a reasonable doubt that the fact that the jury viewed the Appellant in restraints did not contribute to the guilty verdict. The State failed to meet that burden in the present case.

The present case is distinguished from State v. Johnson, 422 S.C. 439, 458, 812 S.E.2d 739, 749 (Ct. App. 2018). In Johnson the South Carolina Court of Appeals wrote:


The circuit court did not err in denying Johnson's motion for mistrial based on his being brought into the courthouse in handcuffs and surrounded by police personnel as the record fails to demonstrate any juror observed this activity or that any juror was prejudiced. See State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010) (“The decision to grant or deny a mistrial is within the sound discretion of the trial court.”); id. (“The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law.”); State v. Moore, 257 S.C. 147, 152-53, 184 S.E.2d 546, 549 (1971) (“We think that when a jury or members thereof see an accused outside the courtroom in chains or handcuffs the situation is psychologically different and less likely to create prejudice in the minds of the jurors.” (quoting State v. Cassel, 48 Wis.2d 619, 180 N.W.2d 607, 611 (1970))); id. at 153, 184 S.E.2d at 549 (affirming the denial of defendant's motion for mistrial noting defendant presented no proof the incident prejudiced the minds of the jurors—only the allegation that it did).

422 S.C. at 458, 812 S.E.2d at 749.

In the present case, the judge, after viewing the space when Appellant was unshackled, said, “But from that standpoint, I’m not sure anybody can see anybody except for the back of the officer at that point and it’s dark in there. Defendant says he saw – looked like he saw two individuals.” (R. p. 294, lines 4-8). The bailiff, however, said she saw Appellant with the chains. Additionally, the judge noted that the officer said he could see at least one juror. (R. p. 293, lines 18-19). The record in the present case, unlike the record in Johnson, demonstrates that jurors could have seen Appellant in restraints. The trial judge in the present case erred in refusing to grant a mistrial when the State failed to prove beyond a reasonable doubt that the fact that the jury viewed the Appellant in restraints did not contribute to the guilty verdict. The error requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of December, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeffery Truesdale states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Keith Kelly, which was held on October 26-28, 2021 And November 29-December 1, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Jeffery Truesdale.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial Transcript pages 1-388;
- (3) State's Exhibit #1 (911 Call CAD Report);
- (4) State's Exhibit #2 (911 Dispatch Call) **TO BE TRANSPORTED**;
- (5) State's Exhibit #3 (EMS Report);
- (6) State's Exhibit #4 (Video Surveillance) **TO BE TRANSPORTED**;
- (7) Court's Exhibit #1-#7 (Jury Notes); and,
- (8) Motion for Directed Verdict and Motion for New Trial.

I certify that this designation contains no matter which is irrelevant to this appeal.


Kathrine H. Hudgins
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This 5th day of December, 2022.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jeffery Truesdale, #296062, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 8th day of December, 2022.



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