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Dec 21 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMUEL EARNEST AARON,

APPELLANT

APPELLATE CASE NO. 2022-000312

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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Rules

Rule 211(b), SCACR 11

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying a mistrial request, where the state elicited improper hearsay testimony from a law enforcement officer, where the officer testified about an out-of-court statement from Appellant's common-law wife about how she received the complaining witness's rings from Appellant, and where Appellant's common-law wife had not yet testified?

STATEMENT OF THE CASE

In September 2020, Appellant was indicted by a Lexington County grand jury for kidnapping, strong armed robbery, and criminal sexual conduct in the first degree. R. 598 (indictments). Represented by Robert “Theo” Williams and Anna Williams, Appellant proceeded to trial before the Honorable Debra R. McCaslin and a jury on March 7, 2022. R. 1. Ashley Wellman and D. Shawn Graham appeared on behalf of the state.

After a four-day trial, Appellant was found guilty as indicted. R. 566, ll. 3 – 10. Judge McCaslin sentenced him to twenty years on the criminal sexual conduct offense, twenty years for the kidnapping charge, and fifteen years on the robbery conviction. R. 575, l. 21 – R. 576 l. 3. The sentences were crafted to run concurrently to one another.

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 court erred in denying a mistrial request, where the state elicited improper hearsay testimony from a law enforcement officer, where the officer testified about an out-of-court statement from Appellant's common-law wife about how she received the complaining witness's rings from Appellant, and where Appellant's common-law wife had not yet testified.

Relevant facts

Karie Sutherland was addicted in methamphetamine in early 2020. R. 157, ll. 10 – 25. On or about January 9, 2020, shortly after being released from jail, Sutherland began walking to a nearby Lexington Department of Social Security office in order to get a food stamps card. R. 160, ll. 1 – 24. She intended to trade the card for methamphetamine. R. 161, ll. 2 – 15.

While she was walking, Appellant drove by in a van and offered her a ride. R. 161, l. 24 – R. 163, l. 21. He drove her to DSS. R. 167, ll. 3 – 4. While they were in the van together, they spoke about the rings that adorned her fingers. R. 166, ll. 2 – 18.

After she finished her business inside DSS, Appellant offered Sutherland a ride to her mother's house. R. 170, l. 7 – R. 171, l. 20. Sutherland testified at trial that there was no agreement between the two regarding any sort of payment in exchange for the ride. R. 174, ll. 11 – 23.

Sutherland testified she realized Appellant was going the wrong way. R. 176, l. 20 – R. 177, l. 17. Appellant parked the van down a dirt road and sexually assaulted Sutherland, according to her testimony at trial. R. 179, l. 8 – R. 181, l. 10. After that, Sutherland indicated Appellant asked for her jewelry. R. 182, l. 24 – R. 183, l. 18. When she protested, he allegedly

forcefully removed them from her fingers. Id. Based on Sutherland’s testimony, Appellant then abandoned her and drove off. R. 184, ll. 1 – 6.

A responding officer, Adrian Zona, found a rag that was involved in the incident. R. 102, ll. 15 – 21. A SLED forensics expert, Courtney Thompson, testified regarding DNA results. R. 270, ll. 11 – 25. The DNA profile was approximately 7.1 septillion times more likely if Appellant contributed to the profile than if an unidentified unrelated individual contributed. Id. Defense counsel did not contest identity. R. 69, ll. 11 – 13.

Another one of the state’s witnesses, James Anderson, was employed as a sergeant with the Lexington County Sheriff’s Department. R. 371. On February 5, 2020, Anderson served an arrest warrant on Appellant. R. 373, ll. 15 – 18. During his time at Appellant’s residence, Anderson spoke with Debra Cleveland, Appellant’s common-law wife. Anderson noticed Cleveland wore a lot of rings on her hands: “[a]lmost every finger had a ring on her hand.” R. 374, ll. 5 – 12. At that point, the state began dancing around some improper hearsay testimony, seemingly suggesting Cleveland told Anderson that she received the rings from Appellant:

Q: And, again, without telling me what she said, did you ask Ms. Cleveland where she got those rings?

A: I did.

Q: Did you ask them from whom [she] got them?

A: Yes.

Q: Did you ask her approximately when she got them?

A: Yes.

Q: Based on that information, what did you do?

R. 374, ll. 13 – 20.

The state then sought to admit two exhibits—rings. R. 374, l. 22 – R. 375, l. 9.

The state then elicited improper hearsay:

Q: Based on the information you received when you found out where she got them, from whom she got them, and when she got them, did you make any requests of Ms. Cleveland?

A: Yes, we asked if she'd be willing to turn the rings over to us that - - that Mr. Aaron had given her.

R. 376, ll. 3 – 8.

Defense counsel immediately objected and advised the trial judge that he had a matter to take up outside the presence of the jury. R. 376, ll. 9 – 11. After the judge sent the jury out of the courtroom, defense counsel moved for a mistrial. R. 376, l. 22 – R. 377, l. 7. Counsel also alleged prosecutorial misconduct. R. 379, l. 15 – R. 380, l. 10.

Following a chambers discussion, the trial judge described the comment as “clearly hearsay.” R. 381, ll. 19 – 25. The judge took the mistrial matter under advisement. R. 382, ll. 1 – 12. Soon thereafter, Cleveland testified. She testified that Appellant gave her the rings that were state’s Exhibits 16 and 17. R. 391, l. 9 – R. 392, l. 1.

After the state rested, the trial judge denied Appellant’s mistrial motion. R. 408, l. 24 – R. 409, l. 18.

Appellant testified in his own defense. He testified that Sutherland offered sex in exchange for a ride. R. 431, l. 20 – R. 432, l. 7. Regarding the rings, Appellant testified that Sutherland left them in his van. R. 443, ll. 2 – 20. He took them home and gave them to Cleveland. Id.

Discussion

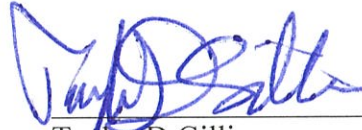
The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). The granting of a motion

for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). “A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons.” State v. Patterson, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct.App.1999). “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.’ ” State v. Rowlands, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000) (quoting Gilliam v. Foster, 75 F.3d 881, 895 (4th Cir. 1996)). The trial court should exhaust other methods to cure possible prejudice before aborting a trial. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

Anderson’s hearsay testimony was the first connection between Cleveland, Appellant, and the rings. The jury heard from a police officer that Cleveland told him that she received the rings from Appellant. It is unknown whether the state would have called Cleveland to testify about the origin of the rings otherwise. This was improper hearsay testimony, and the curative instruction was insufficient to cure the error.

CONCLUSION

Based on the foregoing, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of December, 2022.

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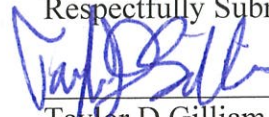
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Samuel Earnest Aaron states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Debra R. McCaslin, which was held on March 7-8 & March 10-11, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Samuel Earnest Aaron.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

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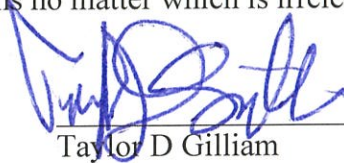
APPELLATE CASE NO. 2022-000312

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

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

- (1) Entire trial transcript;
- (2) Pre-trial hearing; and
- (3) Indictments

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



Taylor D Gilliam
Appellate Defender

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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 Samuel Earnest Aaron, #387497, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 21st day of December, 2022.



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Wednesday, December 21, 2022 4:51 PM
To: SC - BLITCH WILLIAM
Cc: SC - COLLINS CAROLINE; Gilliam, Taylor
Subject: Samuel Aaron - Anders Brief of Appellant - Appellate Case No. 2022-000312
Attachments: Samuel Aaron - Anders Brief of Appellant - Appellate Case No. 2022-000312.pdf; AG coverletter.pdf; Samuel Aaron - Record on Appeal - VOL 2 - Appellate Case No. 2022-000312.pdf; Samuel Aaron - Record on Appeal - VOL 1 - Appellate Case No. 2022-000312.pdf

Dear Mr. Blitch,

Attached please find the Anders Brief of Appellant and Record on Appeal in the above referenced case that is being filed today, December 21, 2022, with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Taylor Gilliam
Appellate Defense