STATE OF SOUTH CAROLINA

COURT OF APPEALS

Appeal from Horry County
Larry B. Hyman, Circuit Court Judge
Appellate Case No. 2020-001497

The State — Respondent

VS.

Theodore I. Bolick — Appellant

REPLY BRIEF OF APPELLANT

Theodore I. Bolick, pro se
Evans Correctional Inst.
610 Highway # 9 West
Bennettsville, S.C. 29512

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RULE

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OBJECTION

The Appellant hereby objects to the Respondents filing of the Initial Brief Of Respondent. The Respondent falsified and fabricated pretextual reasons for five extensions of time to file the Initial Brief of Respondent in a blatant attempt to unnecessarily delay these proceedings, and to prejudice Appellant's ability to receive a fair and timely adjudication to the issues presented on appeal.

The Respondent exploited the Clerk's office for the Court of Appeals inability to comprehend the legal terminology of extraordinary circumstances as defined by Black's Law Dictionary (2019), and in five motions for extensions of time never once alleged or demonstrated a single extraordinary circumstance of which the Clerks office could consider to continue granting the Respondents Fourth and Fifth Motion For Extension of Time.

Black's Law Dictionary (2019) defines Extraordinary Circumstances as...

"A highly unusual set of facts that are not commonly associated with a particular thing or event" See Black's Law Dictionary (11th ed. 2019) under circumstance.

The Respondent is seeking five extension of time to file Initial Brief of Respondent never once alleged or demonstrated a single unusual fact that was not commonly associated with his duties in the Attorney General's office or with the courts.

However, the Clerk's Office granted the Respondent's Fourth and Fifth motion for extension of time falsely stating the Respondent had alleged extraordinary circumstances for the extensions of time. Because the Deputy Clerk's Orders granting the Respondents Fourth and Fifth motion for extension of time are mendacious at best, as the Respondent never alleged any extraordinary circumstances for further extensions, the continuation of these proceedings can only serve to further mock the law

and the rules of the court. To reward the Respondent for their deviant and mendacious behavior aimed at unnecessarily delaying these proceedings is to promote distrust and disrepute to the courts, and invite them to continue their debauchery with impunity. Wherefore, Appellant objects to the Respondents unethical and devious tactics, and calls upon this Honorable Court to take judicial notice of the Respondent's willful tactics aimed at unnecessarily delaying these proceedings.

FACTS

There are several relevant facts of this case that are uncontested and these stipulated facts will simplify this Honorable Court's decision.

The first of these facts is that the Appellant was tried absentia, without counsel, for three seperate unrelated burglaries contained in three seperate indictments in front of one jury on July

23 and 24, 2019. The Appellant was convicted and his sentence was sealed.

The second relevant fact is that on April 22, 2020 the Appellant filed a pro se Motion For Mistrial. That this was a full five months before the Appellant's sentence was imposed.

That in June of 2020 Appellant also filed a pro se Motion For New Trial. This was a full three months before Appellant's sentence was imposed.

Appellant's sentence was imposed by Judge William Seals on September 16, 2020. This is contrary to the Respondents contention that Appellant was sentenced on September 20, 2020. The Appellants contention that he was sentenced on September 16, 2020 is fully supported by the Sentencing sheets, (ROA pgs. 1, 2, and 3) and the September 16, 2020 Transcript submitted as Exhibit 2 in the Motion For Emergency Unsecured Bond that was submitted to this Court on January 9, 2023

The foregoing facts are crucial

to the Appellant's forthcoming argument concerning the Circuit Courts lack of jurisdiction to consider the State's Motion To Reconsider, and Appellant seeks the Honorable Courts verification of these facts.

ARGUMENTS

I Appellant Did Not Knowingly And Voluntarily Waive His Right To Counsel

The Respondent is arguing the trial court did not err in proceeding with a trial in Appellant's absence without the appointment of counsel seems to have trouble distinguishing whether the trial court appointed Appellant counsel or not.

The Respondent argues, "Appellant sought to go forward pro se" However, the Respondent omits the fact Appellant specifically asked for the appointment of counsel, (Trial Transcript, pg. 12, lns. 17-20, and pg. 18, ln 24). These statements made by the Appellant in open court tend to demonstrate Appellant at the least

was beginning to vacillate in his request to proceed pro se. The right to represent ones self may be waived through a defendant's subsequent conduct indicating he is vacillating on the issue or has abandoned his request altogether. Brown V. Waidwright, 665 F.2d 607, 611 (5th Cir. 1982)

"In ambiguous situations created by a defendant's vacillation or manipulation, we must ascribe a 'constitutional primacy' to the right to counsel because this right serves both the individual and collective good, as opposed to only the individual interests served by protecting the right of self representation." Fields V Murray, 49 F.3d 1024, 1029 (4th Cir 1995) See also U.S. V. Gillis, 773 F.2d 549, 559 (4th Cir 1985) (of the [rights to counsel and self representation] the right to be represented is preeminent.)

Further, the Appellant through the course of conversating with the trial court was specifically appointed attorney Martin Sprattlin to assist Appellant with trial (Trial Transcript, pg 23, lns 5-7) The Appellant even informed the

Appellant's attorney. Immediately following this progressive conversation court was adjourned for the day, and Appellant left with the rational and reasonable understanding that he had been appointed Martin Spratlin to assist him during trial. Therefore, it cannot be truthfully said Appellant intelligently and knowingly waived his right to counsel. "The burden is on the state to demonstrate the validity of a defendant's waiver of his right to counsel." State V. Dial, 429 S.C. 128 (2020) at Headnote 7.

The Respondents in their Initial Brief argues that the trial court only offered the Appellant the ability to consult with an attorney from the public defender's office regarding whether Appellant wanted counsel. Respondents would wish this Honorable Court to ignore the fact the trial court did personally address Mr Martin Spratlin and state,

"I want you to represent him.

Okay." (Trial Transcript, pg 23, lns 6 and 7)

This statement made by the trial court erases any doubt to a reasonable mind as to if Mr Spratlin was appointed to assist Appellant during trial. Moreover, if Mr Spratlin was not appointed to the Appellant, then why would the trial court have to allow Mr Spratlin to withdraw as Appellant's counsel the next day in the Appellant's absence. (Trial Transcript, pg. 29, lns. 12-17)

II Joinder of Three Unrelated Burglaries For One Trial Was Not Proper And It Resulted In Manifest Injustice.

"Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." State V. Simmons, 352 S.C. 342 (2002).

Generally, courts do not allow prosecutors to use what is called the

"shotgun approach" by joining seperate unrelated indictments for one trial because of the danger that the jury would use evidence admissible in one count to infer a criminal disposition as to the other counts. See United States V. Foutz, 540 F.2d 733, 736-38 (4th Cir. 1976). Further, a joint trial on multiple counts creates a grave danger that the evidence as to each seperate count will cumulate in the jurors minds. See United States V. Gregory, 369 F.2d 185 (D.C. Cir 1966), cert denied 396 U.S. 865 (1969), and United States V. Halper, 590 F.2d 422 (2d Cir 1978).

The South Carolina Supreme Court in 2002 articulated a four prong test in State V. Harris, 351 S.C. 643 (2002) to determine when charges can be joined in the same indictment and tried together. The Court determined "charges can be joined in the same indictment and tried together where they: (1) arise out of a single chain of circumstances; (2) are proved by the same evidence; (3) are of the same general nature; and (4) no real right of the defendant has been

prejudiced. Id Harris at Headnote 7.

In 2013 the South Carolina Court of Appeals used the "Harris Test" to determine if the joinder of charges in State v. McGoba, 404 S.C. 289 (2013) were proper.

In 2022 the Honorable Court of Appeals reiterated itself and stated, "offenses which are of same nature, but which do not arise out of a single chain of circumstances and are not provable by same evidence, may not properly be tried together." Tyler v. State, 437 S.C. 17 (2022) at Headnote 9. The Court used the "Harris Test" to reach this conclusion. Id at Headnote 8.

Furthermore, the South Carolina Supreme Court held, "A logical connection between other crime and crime charged, and not mere similarity is needed to admit other crimes evidence to show common scheme or plan." State v. Perry, 430 S.C. 24 (2020) (overruling State v. Wallace, 384 S.C. 428 (2009))

Contrary to the Respondents fabricated claim, Appellant has never

asserted these are unique crimes. The Appellate would assert that these are ordinary average burglaries that are completely unrelated and in no way interconnected.

As the Trial Transcript plainly demonstrates there was not a single piece of evidence that was the same in either case. There was not a single piece of evidence or testimony that inferred a chain of circumstances what-so-ever, and there was only eleven witnesses who testified at the trial. Most importantly not one witnesse's testimony was related to or interconnected with all three crimes.

Out of the eleven witnesses who testified, four were victims. Judy and Doane Widenhouse testified only as to the burglary at the Barrell Bar and Grill.

XIAO JIANG's testimony concerned the burglary at China Chef exclusively.

Matthew Griffin's testimony was

exclusively concerning the burglary at Giff's Liquors.

Continuing, five of the witnesses were Myrtle Beach Police officers. The first, Tony Humes' testimony was exclusively related to the burglary at Giff's Liquors and nothing else

The second, Justin Liebeth's testimony was exclusively related to a buccal swab test for DNA and solely related to the burglary at Giff's Liquors.

The third, Nate Howitt testified as to his investigation of the burglaries at the Barrell Bar and Grill and the China Chef, and of his involvement in the search of Appellant's residence. Nate Howitt did not respond to the burglary at Giff's Liquors.

The fourth, Malinda Shadoan's testimony dealt exclusively with the transport of a glove found in Giff's Liquors, as she is an evidence custody officer.

Finally and fifth, Matthew Ammons testified as to his uneventful arrest of the Appellant.

Sasan Safford was an Horry County Detention Center officer who provided testimony about booking photos taken of the Appellant while in jail.

Lastly, Adrienne Hefney is a SLED agent and forensic DNA analyst who testified she found at least two or more persons DNA in a glove that was found in Giffs Liquors.

So in considering the few witnesses actual testimony, five of the witnesses, Matthew Griffin, Tony Humes, Justin Lieberth, Malinda Shadoan, and Adrienne Hefney would only testify in the case of the burglary at Giff's Liquor. Their testimony would be completely irrelevant to the burglaries that occurred at China Chef and Barrell Bar and Grill.

Xiao Jiang and Nate Howitt would testify in the China Chef burglary.

Then Judy and Doane Widenhouse would testify in the Barrell Bar and Grill burglary with Nate Howitt.

The Appellant broke down the testimony of each witness that testified

during the trial to demonstrate with crystal clear clarity the Respondent's mendacious and misleading nature, and to expose the Respondent's fabricated false statement,

> "many of the same witnesses would have testified in each trial." (Initial Brief of Respondent, pg 8)

The Respondent even argues himself the four elements required to join seperate indictments for one trial, but does not demonstrate for the court, or direct the court's attention to where or how these requirements have been met in the record. Respondent relies on false conclusory statements about many unnamed witnesses that would have to ~~in each trial~~ testify in each trial, and yet does not demonstrate how their testimony was interconnected or related.

Further, Respondent omits the fact the trial court intentionally failed to

give the jury instructions as to the seperate charges, and only considering the evidence that was related to the case. Instead the trial court allowed the jury to infer the Appellant's criminal ~~dispot~~ disposition on all the charges based on all the evidence in its cumulative effect. That was a plain error and manifest injustice, something this court may wish to address sua sponte.

The Respondent would also mislead this court to believe this issue is not properly before this court. However, on April 15, 2020 Judge Ferrell Cothran granted the Appellant a mistrial based on the fact that both judge and prosecutor inadvertently allowed these three indictments to be joined for one trial. Then after the term of court expired the State filed an inappropriate Motion ~~For~~ To Reconsider. On June 10, 2020 Judge Cothran acting without jurisdiction granted the States Motion To Reconsider and stated the indictments were properly joined for trial. The

Appellant immediately gave notice of appeal in open court. Therefore, this issue is certainly properly before the court as Appellant will elaborate further in the next argument.

However, the Trial Transcript and the Record On Appeal demonstrate clearly that these were three seperate unrelated burglaries contained in three seperate indictments. There was absolutely no evidence of a chain of circumstances, or that these crimes were related in any way. No single piece of evidence was the same in either case, and no single witness would be needed to testify in all three cases. Therefore, these cases were improperly joined for trial, and Appellant was prejudiced by this joinder because the jury was allowed to improperly infer Appellant's criminal disposition on all three cases by considering the evidence in all three cases in a cumulative effect without being instructed otherwise by the trial court.

III. The Circuit Court Erred In Considering The State's Motion To Reconsider,

"It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires" State V. Mixon, 275 S.C. 575 (1981); State V. Patterson, 272 S.C. 2 (1978); State V. Best, 257 S.C. 361 (1972)

"A trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires," State V. Campbell 376 S.C. 212 (2008) at Headnote 1.

The Appellant was convicted absentia on July 24, 2019, and therefore Appellant's sentences were sealed according to law.

It is well settled "A sealed sentence does not become the judgment of the court until it is opened and read to the defendant" Lytle V. Miller, 157 S.C. 332 (1930)

Months before the Appellant's sentences were unsealed the Appellant filed pro se a Motion For Mistrial, (4/22/20), and

Motion For New Trial, (6/15/20). Thereafter, on September 16, 2020 Appellant's sentence was unsealed and imposed. Appellant vehemently argued to be heard on his Motion For Mistrial and Motion For New Trial before the unsealing of his sentence, but Judge William Seals refused to hear the Appellant or follow the law, and had the Appellant shoved from the courtroom. This fact is manifested by the Transcript from September 16, 2020 which has been previously submitted to this court as Exhibit 2 of the Motion For Emergency Unsecured Bond on January 9, 2023.

On September 24, 2020 Appellant filed a Motion To Reconsider, (ROA pg 46) seeking to have the court reconsider it's position of refusing to hear Appellant's Motion For Mistrial and Motion For New Trial.

On November 3, 2020 Judge Steven John dismissed all outstanding and post-trial motions until jurisdiction was returned by the Appellate Court. (ROA pg. 4)

Because the Appellant's Motion For

Mistrial and Motion For New Trial were filed months prior to Appellant's sentence being unsealed and imposed, it becomes irrefutable that the Motion For Mistrial and Motion For New Trial were definately not "Post-Trial" motions. (emphasis added).

Rule 29, SCRCrimP states in pertinent part,

"Rule 29. Post-Trial Motions

(a) Generally. Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." (again emphasis added).

On February 5, 2021 the Court of Appeals remanded this case back to the circuit court for consideration of of all outstanding motions, (ROA pg. 5)

Thereafter, on April 15, 2021 Judge Ferrell Cothran granted the Appellant's Motion For Mistrial and Motion For New Trial. Then on April 16, 2021, the last day

of that term of court, Judge Cothran signed the Orders to that effect, (ROA pgs 8-11).

Thereafter, eight days after the term of court expired, on April 23, 2021 Assistant Solicitor, Thomas Groom Terrell III filed a Motion For Reconsideration, (ROA pg. 49). Mr Terrell continuing in his deviant, diabolical and mendacious nature blantantly lied to the court in in his Motion For Reconsideration and maliciously stated,

> "His sentence was unsealed and Defendant subsequently filed, amongst other things, a Motion for Mistrial." (See ROA pg. 49)

It was this malicious lie by Mr. Terrell which led Judge Cothran to believe that he had the authority to consider Mr. Terrell's Motion For Reconsideration after the term of court had expired. Therefore, on June 10, 2021 Judge Cothran signed an Order of Reconsideration, (ROA pg. 13).

The Respondent has conceded and therefore stipulated that the Appellant's Motion For Mistrial and Motion For New Trial were filed months before the Appellant's sentences were unsealed and imposed. (Initial Brief of Respondent, pg. 12, second paragraph).

The Respondent also concedes and therefore stipulates that Appellant's Motion For Mistrial and Motion For New Trial are not post-trial motions under Rule 29, SCRCrimP. (Initial Brief of Respondent, pg. 12, at Footnote 2)

However, and suspiciously enough the Respondent argues,

> "The State's motion was not an inappropriate successive motion and was filed within the time limits required by Rule 29, SCRCrimP. (Initial Brief of Respondent, pg. 12, first paragraph).

The Respondent then goes on to argue the case of State V. Pfeiffer, 427 S.C. 10 (2019) to demonstrate why the

State's Motion To Reconsider was appropriate. However, the Appellant's Motion For Mistrial and Motion For New Trial were not post-trial motions as stipulated by both parties, and therefore, Pfeiffer and Rule 29, SCRCrimP. are simply not applicable to this instant case.

Mr Terrell did not file his Motion To Reconsider until April 23, 2021, seven months after Appellant's sentence was imposed, and because the Appellant had not himself filed or been heard on a post-trial motion, Mr Terrell's Motion To Reconsider was totally inappropiate, and not allowed under Rule 29, SCRCrimP., and therefore, Judge Cothran had no legal authority or jurisdiction to consider it.

Furthermore, Mr Terrell's Motion To Reconsider was not based on,... (1) an intervening change in the controlling law,... (2) new evidence that was not available at the previous hearing, and ... (3) or that a clear error of law had been made and manifest injustice had occurred. See Robinson V. Wix Filtration

Corp, 599 F.3d 403, 409 (4th Cir 2010). The State's Motion To Reconsider was simply based on the fabricated lie that Appellant had filed his Motion For Mistrial and Motion For New Trial subsequently to being sentenced, (ROA pg. 49) and that the State, (Mr Terrell) wanted a second chance to change Judge Cothran's mind.

CONCLUSION

WHEREFORE: because of the broad sweeping constitutional violations Appellant has been subjected to including being subjected to double jeopardy, and the malicious and mendacious nature of the state representatives involved in this case, that this Honorable Court again vacate the Appellant's sentences, (ROA pg. 12) and order Appellant's release.

Respectfully submitted
January 27, 2023
Theodore Bolick pro se
Evans Correctional Inst

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STATE OF SOUTH CAROLINA

COURT OF APPEALS

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Appeal from Horry County
Larry B. Hyman, Circuit Court Judge
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The State — Respondent

VS,

Theodore I. Bolick — Appellant

PROOF OF SERVICE

I hereby certify I placed a copy of the Reply Brief of Appellant in the U.S. Mail postage pre-paid addressed as follows.

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