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STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

2023 APR 17 PM 3:19

COUNTY OF DORCHESTER)

WARRANT NO(s): 2021-GS-18-1041 and
2021-GS-18-1043

STATE OF SOUTH CAROLINA,)

vs.)

DERRICK BOYD)

Defendant.)

**ORDER DENYING DEFENDANT'S
RENEWED MOTION FOR A DIRECTED
VERDICT, OR IN THE ALTERNATIVE, A
MISTRIAL, OR IN THE ALTERNATIVE A
NEW TRIAL**

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Apr 26 2023

SC Court of Appeals

This matter came before this Court by way of Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial brought forth pursuant to South Carolina Rules of Criminal Procedure 19 and 29. Derrick Boyd was convicted on Possession with Intent to Distribute Marijuana and Trafficking Cocaine after a jury trial.

After reviewing the materials submitted, I find that oral arguments will not assist in the ruling of Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial and the Motion can be determined on briefs filed by the parties. The Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial is denied.

Motion to Suppress Evidence and Motion to Suppress Statement

Prior to trial, a motion to suppress evidence and a motion to suppress Defendant's statements was made. This court denied both motions.

“The admissibility of evidence is within the sound discretion of the trial judge.” *State v. Mansfield*, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000). “Accordingly, evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of a legal error which results in prejudice to the defendant.” *Id.* “Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury’s verdict.” *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). “Where ‘guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,’ an insubstantial error that does not affect the result of the trial is considered harmless.” *Id.* at 447, 710 S.E.2d at 60 (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006)); *State v. Heyward*, 432 S.C. 296, 314, 852 S.E.2d 452, 461 (Ct. App. 2020).

The court fully incorporates the bases articulated fully in the transcript at the trial regarding the denial of both motions and sees no reason to change or otherwise alter that determination. The motion for reconsideration regarding the motion to suppress evidence and motion to suppress the Defendant’s statement is denied.

Motion for a Directed Verdict

At the close of the State’s case, Boyd moved for a directed verdict. The trial court denied Boyd’s motion, finding there was direct and substantial circumstantial evidence which reasonably tends to prove accused’s guilt on each of his charges. At the close of Boyd’s case-in-chief, he renewed his directed verdict motion, which the trial court denied. Following the denial of the renewed motion for directed verdict Boyd’s case was submitted to the jury and he was found guilty of Possession with Intent to Distribute Marijuana and Trafficking Cocaine.

A motion for judgment notwithstanding the verdict (JNOV) is a renewal of a directed verdict motion. Rules Crim.Proc., Rule 50(b); *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *Sellers v. State*, 362 S.C. 182, 607 S.E.2d 82 (2005); *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Wilds*, 355 S.C. 269, 584 S.E.2d 138 (Ct.App.2003).

If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. *Cherry*, 361 S.C. at 593–94, 606 S.E.2d at 478; *State v. Harris*, 351 S.C. 643, 572 S.E.2d 267 (2002); *State v. Follin*, 352 S.C. 235, 573 S.E.2d 812 (Ct.App.2002); *see also State v. Horton*, 359 S.C. 555, 598 S.E.2d 279 (Ct.App.2004) (noting judge should deny motion for directed verdict if there is any direct or substantial circumstantial evidence which reasonably tends to prove accused's guilt, or from which his guilt may be fairly and logically deduced).

When a motion for a directed verdict is made in a criminal case in which the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *State v. Walker*, 349 S.C. 49, 562 S.E.2d 313 (2002); *State v. Buckmon*, 347 S.C. 316, 555 S.E.2d 402 (2001); *Al-Amin*, 353 S.C. at 411, 578 S.E.2d at 35; *State v. Padgett*, 354 S.C. 268, 580 S.E.2d 159 (Ct.App.2003); *State v. Zeigler*, 364 S.C. 94, 101–02, 610 S.E.2d 859, 863 (Ct. App. 2005); *see also State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000) (stating trial court has duty to submit case to jury where evidence is circumstantial, if there is substantial circumstantial evidence which reasonably tends to prove guilt of accused or from which his guilt may be fairly and logically deduced).

In the instant case, the record provides substantial circumstantial evidence reasonably tending to prove Defendant's guilt for each charge. Viewed in the light most favorable to the State, there was substantial circumstantial evidence to submit the charge to the jury. The court sees no reason to change or otherwise alter that determination and the motion for reconsideration for the directed Verdicts are denied.

Motion for Mistrial and Motion for a New Trial

Defendant made a motion for a mistrial and a motion for a new trial following the polling of the jury that resulted in one juror recanting the verdict. The court requested the jury return to the jury room to continue deliberations. Defendant's motion for a mistrial was denied. The court sees no reason to change or otherwise alter either determination.

"The decision to grant or deny a mistrial is within the sound discretion of the trial court." *State v. Carrigan*, 284 S.C. 610, 328 S.E.2d 119 (Ct. App. 1985); *State v. Ayers*, 284 S.C. 266, 325 S.E.2d 579 (Ct. App. 1985); *State v. McDaniel*, 275 S.C. 222, 268 S.E.2d 585 (1980); *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994); *State v. Vazquez*, 364 S.C. 293, 613 S.E.2d 359 (2005); *State v. Adams*, 354 S.C. 361, 580 S.E.2d 785 (Ct.App.2003); *State v. Thompson*, 352 S.C. 552, 575 S.E.2d 77 (Ct.App.2003); *State v. Stanley*, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). A mistrial should only be granted upon exercise of the greatest of caution for "plain and obvious reasons," *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989), or "only if there is a manifest necessity or the ends of public justice are served," *State v. Brown*, 389 S.C. 84, 94, 697 S.E.2d 622, 627–28 (Ct. App. 2010), or when absolutely necessary. *State v. Wilson*, 389 S.C. 579, 585–86, 698 S.E.2d 862, 865–66 (Ct. App. 2010); *State v. Creech*, 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1993).

“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. Bantan*, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010) (quoting *State v. Rowlands*, 343 S.C. 454, 457–58, 539 S.E.2d 717, 719 (Ct. App. 2000)); *State v. Benton*, 435 S.C. 250, 259, 865 S.E.2d 919, 923 (Ct. App. 2021), *reh'g denied* (Nov. 18, 2021), *cert. granted* (Sept. 7, 2022).

Further, the determination of what curative measures are appropriate in a given case rests in the sound discretion of the [circuit court]. [It] should *exhaust other methods* to cure the prejudice before aborting a trial.” (emphasis added) (quoting *State v. Stone*, 290 S.C. 380, 382, 350 S.E.2d 517, 518 (1986)); *State v. Smith*, No. 2018-000952, 2022 WL 223326, at *1 (S.C. Ct. App. Jan. 26, 2022); *State v. Kelly*, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007).

If the poll reveals the jury's announced verdict is not in fact unanimous, the verdict cannot stand, and the trial court may, as circumstances warrant, direct further deliberation or declare a mistrial. *State v. Kelly*, 372 S.C. 167, 170–71, 641 S.E.2d 468, 470 (Ct. App. 2007). Just as trial counsel has no duty to request a poll, the trial court has no duty to conduct one without a request. *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002); *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981); *State v. Wright*, 432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020), *aff'd*, No. 2021-000146, 2023 WL 2291747 (S.C. Mar. 1, 2023). “If it is made known to the court when it is time to render the verdict that any juror does not assent to it, the verdict cannot be received and the jury should retire to their room until they have agreed.” *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 576 (1995). A judge has a duty to urge the jury to reach a verdict, but he may not coerce them. *Id.* at 316, 460 S.E.2d at 575; *see also*, *State v. Kelly*, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007).

Here, the jury initially deliberated for a short amount of time before returning with its verdict. Upon Defendant's request, the jurors were individually polled and one juror recanted on one of the verdicts. Because jury deliberation had occurred for a limited period of time prior to the initial verdict, the court returned the jury to continue deliberation. After further deliberations, the court was notified the jury had reached its verdict, which was verified after a second request for polling. The court was satisfied after the second polling, which was unanimous, that there was no coercion. At no time did the jury indicate it was deadlocked. Following the jury's deliberation there was no indication whatsoever that the recanting juror was pressured into concurring with the ultimate unanimous verdict. The court denied the motions and sees no reason to change or otherwise alter that determination.

Conclusion

After review, I find no reason to alter the previous rulings. After considering Defendant's Renewed Motion for a Directed Verdict, or in the alternative, a Mistrial, or in the alternative a New Trial, I find they should be denied for the reasons stated herein.

IT IS SO ORDERED!



Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

April 14, 2023
St. George, South Carolina