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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Appellate Case No. 2022-000333

The Honorable Walton J. McLeod IV, Circuit Court Judge

State of South Carolina.....Respondent,

v.

Reginald Da'Aron CampbellAppellant.

INITIAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

WILLIAM BLITCH JR.
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Attorneys for Respondent

MEAGAN JOHNSON
ELIZABETH FRANKLIN-BEST

Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred by denying trial counsel's motion to quash the jury pool because it was not representative of the African American population in Abbeville County, in violation of *State v. Patterson*.
- II. The trial court erred in denying trial counsel's motion for a directed verdict as the evidence presented by the State was insufficient to support a guilty verdict.
- III. The trial court erred in charging the jury on the charge of attempted murder when there was zero evidence presented of specific intent to kill.

STATEMENT OF THE CASE

Reginald Campbell was indicted by the Abbeville County grand jury for attempted murder. He was tried before the Honorable Donald B. Hocker (for jury selection only) and the Honorable Walton J. McLeod, IV, and a jury between February 28- March 3, 2022. He was convicted of the lesser included offense of Assault and Battery of a High and Aggravated Nature and sentenced to fourteen years' imprisonment. Campbell was represented by Aaron Taylor. The State was represented by Micah Black and Caroline Avant.

This appeal timely follows.

STANDARD OF REVIEW

“In criminal cases, appellate courts sit to review errors of law only.” *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). “[T]he conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had.” *State v. Heath*, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958). An abuse of that discretion occurs where the trial court’s conclusions are based on unsupported factual conclusions or controlled by an error of law. *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020).

Relevant Facts

Reginald Campbell was convicted of Assault and Battery of a High and Aggravated Nature (ABHAN) from a chaotic bar fight, which occurred at Wings 101 on the Abbeville Square in Abbeville, South Carolina. Tr. 3, p. 6. On December 29, 2019, the restaurant and bar Wings 101, located on the corner of the Abbeville Square, was packed with patrons eating, drinking, and watching the Clemson versus Ohio State playoff game. Tr. 2, p. 120. The game started around 8pm. Tr. 2, p. 120. Last call for the bar was around 11:45pm as there is no selling of alcohol on Sunday in Abbeville. Tr. 2, p. 122. During the course of the evening, there was a verbal altercation between two parties at the bar. Dakota Harrison went to the bar to watch the football game with her then-boyfriend, David Gresk, who goes by the name "Easel." Tr. 2, p. 62. They were at the bar for approximately three hours drinking and watching the football game. Tr. 2, pg. 62. Harrison testified that she went to the bathroom and as she was walking back to her table, she bumped into somebody because it was so packed in the bar. Tr. 2, p. 63. She testified the person she bumped into was an African-American male, with dreadlocks and a gold tooth, and he was wearing a black jacket and a red shirt. Tr. 2, p. 63. After she bumped into this man, he allegedly yelled at her and called her a name causing Easel to come over and get involved. Tr. 2, p. 63. Multiple witnesses testified that Easel and this man were fighting inside the bar at this time although it was simply a verbal altercation and not a physical one while inside the bar. When Easel testified however, he contradicted all the other eyewitnesses and said he went up to the man and Harrison, "grabbed her and tried to deescalate the situation," and left without any altercation. Tr. 2, p. 76. Easel and Harrison both testified they left the bar immediately after and went to a friend's house. Tr. 2, p. 77.

After leaving the bar, Easel retrieved four men to go back to the bar with him allegedly to finish watching the Clemson game at the bar. Easel had no explanation why he returned to the bar with these other men who were not previously watching the game at the bar, when the game was likely over at the time they went back to the bar, and they went back to the bar at the time of last call, when they would not have been able to stay at the bar any longer due to its closing. Tr. 2, p. 77-78. Easel testified when they arrived at Wings 101, everyone was leaving the bar. Tr. 2, p. 78. He claimed he did not go back there to start a fight with this man. Yet when he arrived, he happened to “bump into” this man again outside of Wings 101 and words were exchanged then an altercation broke out. Tr. 2, p. 78.

The two groups involved were one group of African-American males and one group of Caucasian males. A physical altercation ensued outside of Wings 101. All participants had been consuming alcohol on the night of this incident, and most had been drinking for many hours. Easel testified while he was fighting, he heard a gunshot but did not see anything. Tr. 2 p. 80. Harrison also returned to the bar after Easel. Tr. 2 p. 68. When she returned, the fight was already in progress outside. Tr. 2 p. 68. She saw people fighting each other and she claimed to have seen the same man who bumped into her in the bar pull out a gun and shoot the victim in this case, Charles Fleming. Tr. 2 p. 69. She was given a photo lineup by law enforcement the next day but was unable to pick anyone out of a lineup as the shooter. Tr. 2 p. 71.

Law enforcement met with Amanda Brooke Mobley and Ashleah Willoughby Ashley and obtained statements from them the day after this incident. They told law enforcement that they had spoken to Reginald Campbell while inside of Wings 101, prior to the physical altercation which occurred outside after last call. Tr. 2 p. 142. Ashley told law enforcement she went to

school with Reginald Campbell and briefly spoke to him inside the bar, introducing him to Mobley. Tr. 2 p. 142. She said he did not say much back to her. They both were also shown a photo lineup from law enforcement. They both identified Reginald Campbell as the man they spoke to inside Wings 101, whom Ashley knew from school. They identified him as the African American male, with dreadlocks and gold teeth, who was inside Wings 101 that night. Neither one of them saw who shot Fleming. Tr. 2 p. 112, 152. Law enforcement arrested Reginald Campbell based on these eyewitness identifications.

There was no forensic evidence presented in this case whatsoever. No gun was found and no DNA was processed. No testing was performed on the shell found outside of Wings 101. The only evidence the State presented at trial was the identification by two eyewitnesses, Mobley and Ashley. However, these two eyewitnesses only identified Campbell as a black male, with dreadlocks, wearing a red shirt inside of Wings 101. Tr. 2 p. 115. Neither one of these witnesses saw anyone shoot Fleming. Tr. 2 p. 112, 152. They identified Campbell as the man who bumped into Harrison and Harrison claimed the man who bumped into her was the one to shoot Fleming. Interestingly, she was the only one who claimed to have seen a gun or see anyone get shot. Even Fleming did not see who shot him. Tr. 2 p. 134. Furthermore, both of these “eyewitness identifications” were cross-racial identifications. All of these witnesses had been drinking alcohol for hours prior to this incident but all claimed to not have been drunk at the time of the incident or had their perception or memory impaired regarding this incident in any way.

Prior to the start of the trial, trial counsel made a motion to quash the jury due to the jury’s composition not reflecting the percentage of the African American population in Abbeville County pursuant to *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997). Tr. 1 p. 57. The trial

judge took judicial notice that the demographic of African Americans in Abbeville County was about 27.6 percent. Tr. 1 p. 58. The trial court ruled that the panel was not in violation of *State v. Patterson* because, according to the Clerk's office, 24 percent of the people summoned for the first and second panel were African American. Tr. 1 p. 57.

After the testimony of the case was completed, trial counsel moved for directed verdict on the charge of attempted murder based on the fact that not one witness identified the defendant as the shooter, there was no forensic evidence whatsoever, and there was no evidence of specific intent to kill. Tr. 3 p. 20. The trial court denied the motion for directed verdict and the jury was instructed on Attempted Murder and the lesser included charge of ABHAN. Tr. 3 p. 23.

The jury deliberated over two different days and returned a verdict of guilty to the lesser included charge of ABHAN. Tr. 4 p. 6.

ARGUMENTS

- I. The trial court erred by denying trial counsel's motion to quash the jury pool because it was not representative of the African American population in Abbeville County, in violation of *State v. Patterson*.

The empaneled jury was comprised of two African American jurors and ten Caucasian jurors. Both of the alternates selected were African American. Trial counsel objected to the jury pool and made a motion to quash the jury as in violation of *State v. Patterson*. The trial court rejected this argument and ruled that 24 percent of those summoned for jury service were African American and took judicial notice that the African American population in Abbeville County is 27.6 percent and according to the trial court that was not in violation of *State v. Patterson*. Tr. 1 p. 58. Respectfully, Appellant disagrees.

This Court ruled in *State v. Patterson* that, "[i]n order to establish a prima facie violation of the fair cross-section requirement, the defendant must show that 1) the group excluded is a 'distinctive' group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process." *State v. Patterson*, 324 S.C. 5, 21, 482 S.E.2d 760, 767-768 (1997) (citing *Duren v. Missouri*, 439 U.S. 357 (1979)). The Court in *Patterson* ruled that **after exemptions and excusals**, the number of black jurors was seven percent of the eighty-two members remaining and that was not an underrepresentation of the group whose population in Lexington County was eleven percent. *Id.* at 21 (emphasis added). It is clear that the Court is to look at the total number of the challenged jury pool, and consider the number of the group within that challenged jury pool to decide if there is a violation of the fair cross-section requirement- not at the number

of actual jurors seated, the number of juror summons sent, or the number of the unchallenged jury pool.

Here, the trial court looked at the jury summons for the first and second panel and determined that 24 percent of those summoned were African American and that was not far off from the 27.6 percent of the population. Tr. 1 p. 58. However, when looking at the total number of jurors present, the percentage is not representative of the African American population in Abbeville County. Trial counsel noted that the jury pool was split into three different groups for jury selection due to Covid protocols at the time. The first pool contained forty-three jurors, eight of whom were African American- only nineteen percent. The second group contained thirty-seven jurors, eight of whom were African American- only twenty-two percent. Tr. 1 p. 58. Combining the two group together is a total of eighty jurors with only sixteen of them being African American. That is twenty percent of the jury pool present. Looking at the number of those represented in the actual jury pool, not looking at the data about those summoned for jury service, shows much lower percentages than the population of African Americans in Abbeville County.

The Court failed to inquire into the demographics of the challenged jury pool when ruling on the motion by trial counsel regarding the demographics of the jury pool. Just looking at the number of juror summons sent for jury duty is not sufficient. The Court should have inquired into the demographics of the challenged jury pool. The actual number of African-American jurors present was only twenty percent of the total jury pool present on the day of jury selection: nineteen percent in group one and twenty-two percent in group two. This was an

underrepresentation of the African American population in Abbeville County and in violation of *State v. Patterson*.

In a case such as this one, the lack of African American jurors is particularly prejudicial to the Appellant. The Defendant is African American, the only evidence presented by the State is the cross-racial identification of the Appellant by two Caucasian witnesses, which is inherently unreliable evidence. The lack of representation of this group on the jury is particularly prejudicial in this case because the race of the Appellant is the underrepresented group at issue and the State's entire case against him rests on cross-racial eyewitness identification.

Respectfully, Campbell asks this Court to grant him a new trial.

- II. The trial court erred in denying trial counsel's motion for a directed verdict as the evidence presented by the State was insufficient to support a guilty verdict.

The State's evidence failed to provide evidence on which a jury could fairly and logically find Campbell guilty of the crime charged. The trial court therefore erred in denying Campbell's motion for directed verdict.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). "[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). "When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "'Suspicion' implies a belief or opinion as to guilt based

upon facts or circumstances which do not amount to proof.” *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). A case should only be submitted to the jury “if there be 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. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955).

Even construing the evidence in the light most favorable to the State, the evidence does not reasonably tend to prove Campbell’s guilt. This case presented zero forensic evidence. No DNA, no testing of the shell casing found outside of Wings 101, no weapon found or tested. The only evidence the State presented at trial was the identification of Campbell as the man who bumped into Harrison and Harrison claimed the man who bumped into her earlier in the night was the one to shoot Fleming. However, she could not identify anyone from a law enforcement photo lineup as the shooter. No one directly identified Campbell as the one who shot Fleming.

Eyewitness identification is inherently unreliable evidence. The United States Supreme Court has recognized “the inherently suspect qualities of eyewitness identification evidence.” *Watkins v. Sowders*, 449 U.S. 341, 350 (1981). Such evidence is “notoriously unreliable,” see *United States v. Wade*, 388 U.S. 218, 228 (1967); *Manson v. Brathwaite*, 432 U.S. 98, 111–112 (1977), yet it has a distinct impact on juries. “All the evidence points rather strikingly to the conclusion that there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, ‘That’s the one!’” E. Loftus, *Eyewitness Testimony* 19 (1979).

Furthermore, all of the witnesses on the night of this incident had been drinking alcohol for hours prior to this incident. Illogically, they all testified that although they had been drinking

for hours, they were not drunk and their perception and memory was not in any way affected by hours of drinking. Even worse, this was cross-racial identification. (“Cross-racial identifications are much less likely to be accurate than same race identifications.” *Rahaim & Brodsky, Empirical Evidence versus Common Sense: Juror and Lawyer Knowledge of Eyewitness Accuracy*, 7 Law and Psych. Rev. 1, 2 (1982). These authorities suggest that eyewitness testimony alone, in the absence of corroboration, is to be viewed with some suspicion.)

In light of the utter lack of evidence presented by the State, the trial court erred in denying trial counsel’s motion for a directed verdict.

Respectfully, this Court should reverse Campbell’s conviction.

- III. The trial court erred in charging the jury on the charge of attempted murder when there was zero evidence presented of specific intent to kill.

Attempted murder requires proof that the defendant had specific intent to kill. *State v. King*, 422 S.C. 47, 55, 810 S.E.2d 18, 22 (2017). “[S]pecific intent means that the defendant consciously intended the completion of acts comprising the [completed] offense.” *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001) (quoting *State v. Sutton*, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000)). “ABHAN is a lesser-included offense of attempted murder.” *State v. Middleton*, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). “An ABHAN charge is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill.” *State v. Dennis*, 402 S.C. 627, 638, 742 S.E.2d 21, 27 (Ct. App. 2013) (*per curiam*) (quoting *State v. Coleman*, 342 S.C. 172, 176, 536 S.E.2d 387, 389 (Ct. App. 2000)). There was absolutely no evidence presented of specific intent to kill. This was not a case where there was some evidence tending to prove specific intent to kill and some tending to prove a general intent where the jury should be left to determine whether the evidence provided general or specific intent. In this case,

there was absolutely no evidence of specific intent to kill. Fleming did not know Campbell and Campbell did not know Fleming. The two were in no way engaged in any altercation or even any interaction throughout the course of the evening. Furthermore, no one ever even identified Campbell as the shooter. The lack of evidence of an essential element of the crime should have resulted in granting of the defense's motion for a directed verdict, rather than an instruction on a lesser included charge of ABHAN.

What all too frequently occurs is that juries who deliberate for long periods of time end up compromising on a verdict in order to be finished and reach a resolution. When the charge of attempted murder was allowed to be presented to the jury, without any evidence to support it, and the lesser included charge of ABHAN was also instructed, this gave the jury a third option to convict or acquit on the attempted murder charge- to convict on the lesser included charge of ABHAN. Not knowing the penalties attached, juries can see this as a middle ground when deliberating for long periods of time. This particular jury deliberated over two different days prior to reaching a verdict of guilty of ABHAN.

Respectfully, this Court should reverse Campbell's conviction.

CONCLUSION

This Court should reverse Campbell's conviction.

Respectfully submitted,

/s/ Meagan Johnson

Meagan Johnson

Elizabeth Franklin-Best, P.C.

3710 Landmark Drive, Suite 113

Columbia, South Carolina 29204

meagan@franklinbestlaw.com

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