

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of General Sessions
The Honorable Maite Murphy

Case No.: 2022-001254

State of South Carolina,

Respondent,

vs.

Derrick Tyler Mills,

Petitioner.

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON APPEAL

The circuit court erred as a matter of law when it conducted any proceedings after declaring a mistrial, specifically in requiring jurors to return to the courtroom, reading a verdict form, and sentencing Appellant because it lacked jurisdiction once the trial ended.

STATEMENT OF THE CASE

Derrick Tyler Mills ("Appellant") was indicted for one count of armed robbery (2017-GS-09-0110) and one count of murder (2017-GS-09-0109). His co-defendant and son, Quintin DeSean Mills, was also charged with one count of murder (2017-GS-09-0111) and one count of armed robbery (2017-GS-09-0112). These charges arose out of an altercation in the Sugar Hill area of Calhoun County that occurred on or about December 13, 2014 that left Charles Brown dead.

Defendants proceeded to trial before a jury and the Honorable Maite Murphy on May 21-23, 2019 in St. Matthews, Calhoun County, South Carolina. Ted Lupton, Esquire, represented the State; Mark Leidendecker and Breen Stevens, Esquires, represented Appellant; and Andrew B. Farley, Esquire represented Desean Mills. Quintin Mills was found guilty of armed robbery and not guilty of murder. He was sentenced to twenty years' imprisonment with credit for time served. At the return of those verdicts, the jury informed the court that they were deadlocked by sending a note asking what would happen if they could not reach an agreement. (App. p. 450, lines 13-17) The court read them an Allen charge and they resumed deliberation. (App. p.452, line 10-p.454, line 5) Another note was received indicating deadlock and the court informed counsel that it must declare a mistrial. (App. p.458, lines 1-9) The jury was brought back to the courtroom, a mistrial was declared, and the jury was excused. (App. p.458, lines 15-24)

The transcript resumes, though, with the court placing on the record the fact that court personnel found a completed verdict form in the jury room indicating that the jury had found Appellant guilty of armed robbery. (App. p.459, lines 10-19) The jury was brought back into the courtroom, which required courthouse personnel to go into the parking lot and fetch them, and questioned, over the objection of defense counsel, as to whether they found Appellant guilty of

armed robbery. They responded affirmatively. Appellant was sentenced to life imprisonment without the possibility of parole due to his prior offenses.

A notice of appeal was filed on May 31, 2019, and was perfected by filing of the initial brief and designation of matter on March 25, 2020. Respondent filed its initial brief on August 27, 2020. A reply brief was filed by Appellant on September 8, 2020, with final briefs filed on September 25, 2020. Respondent filed its final brief on October 30, 2020. Oral argument was held April 12, 2022, with an order affirming the outcome at trial issued July 20, 2022. Appellant filed a motion for rehearing on July 28, 2022, which was denied August 11, 2022. Appellant filed a petition for writ of certiorari on September 9, 2022, which was granted June 6, 2023. This brief follows.

STATEMENT OF FACTS

These charges stem from an attempted sale of a motorcycle by Quintin Mills ("Co-defendant") to Charles Brown ("Victim"). There were delays in the parties meeting up and they eventually came together in a secluded park after the sun had set. Present were the defendants, Victim, his stepson Jarvis Mack, and Vincent Kendrell Thompson. (App. p.133, lines 2-3) Victim and Mr. Mack had been drinking while waiting for the meet up. (App. p.152, lines 12-23) When the three men arrived at the location, Defendants were present, though Appellant was not expected. (App. p.139, lines 2-7; p.199, lines 13-25) Upon viewing the motorcycle, Mr. Thompson informed the others that it was not the R-1000 model that they were expecting to purchase, but rather a 600. (App. p.139, lines 11-14) Co-Defendant agreed to sell the correct motorcycle, but Appellant prevented the transaction, stating something needed to happen that night. (App. p.139, line 20-p.140, line 2) Victim refused to participate and headed for the car. When it became clear that the deal was not happening, Appellant pulled a gun as both defendants began pulling the men from the car. (App. p.142, lines 13-16; p.216, lines 12-18) Mr. Mack ran while Mr. Thompson remained at the scene. (App. p.142, lines 17-18) Mr. Thompson's pockets were searched by Co-Defendant. (App. p.144, lines 7-11) During this time, Mr. Thompson testified, Appellant took Victim behind their car and shot him. (App. p.144, lines 12-21) After shooting, he searched Victim's pockets and ran toward Mr. Thompson and Co-Defendant "clicking the gun." (App. p. 146, lines 14-23) Mr. Thompson ran to his grandmother's house and heard the motorcycle drive away. (App. p. 147, lines 1-14) Eventually Mr. Mack and his brother retrieved him from that location. (App. p.161, lines 9-10)

STANDARD OF REVIEW

"A trial judge's decision to grant or deny a mistrial will not be reversed on appeal absent an abuse of discretion amounting to an error of law." State v. Rowlands, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000). "Whether a mistrial is manifestly necessary is a fact specific inquiry." Id. "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.

"The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion." State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-28 (2000). In order to receive a mistrial, the defendant must show error and resulting prejudice. Id.

Appellate Courts "review the decision with deference to the trial court's superior position to observe the courtroom atmosphere, the jury's demeanor, and the tenor and rhythm of the trial." State v. Taylor, 427 S.C. 208, 212, 829 S.E.2d 723, 726 (Ct. App. 2019).

"The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999)." State v. White, 371 S.C. 439, 443, 639 S.E.2d 160, 162 (Ct. App. 2006).

ARGUMENT

The circuit court erred as a matter of law when it conducted any proceedings after declaring a mistrial, specifically in requiring jurors to return to the courtroom, reading a verdict form, and sentencing Appellant because it lacked jurisdiction once the trial ended.

There is no rule of court that states when a criminal case is over. Typically, it is by the reading of a verdict by the court. This action ends the guilt phase of a trial. Even if sentencing immediately follows, it can be intellectually distinguished from the entry of evidence, presentation of counsel, and deliberation of the jury. When a jury is unable to render a unanimous verdict, however, the only proclamation a trial judge can make is to declare a mistrial.

The issue of unanimous verdicts and how to encourage juries to reach them has long plagued this country and state. All states but Louisiana and Oregon require unanimous verdicts in criminal trials. Jeffrey B. Abramson, We, the Jury: The Jury System and the Ideal of Democracy: with a New Preface, 180 (2000). The accepted first step to attempt to overcome a hung jury is the issuance of an Allen charge, which was first propounded by the United States Supreme Court in 1896. Allen v. United States, 164 U.S. 492, 17 S. Ct. 154 (1896). In this opinion, the justices held that it may be proper and helpful to remind jurors to thoroughly consider others' views while maintaining their personal convictions: "While, undoubtedly, the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the juryroom. The very object of the jury system is to secure unanimity by a comparison of views, and by arguments among the jurors themselves." Id., 164 U.S. at 501, 17 S.Ct. at 157.

In this matter, an Allen charge was given that comported with these ideals and the resulting South Carolina case law. The jurors were reminded to listen to the opinions of fellow jurors while maintaining their own thoughts, as well as that any future jury would come from the same pool.

(App. p.452, line 10 - p.454, line 5) The South Carolina Court of Appeals recently considered a case regarding the use of an Allen charge in which they admitted that it could insert volatility into the motional world of jury deliberation, but it still an effective tool for resolving deadlock. State v. Taylor, 427 S.C. 208, 829 S.E.2d 723 (Ct. App. 2019). Based upon this recent case law, it appears that the Allen charge given in this trial was within the bounds of the law of our state. All of this is to say that the jury understood the importance of unanimity, the consequence of deadlock, and that the trial court was appropriate in every measure until it recalled the jury.

A similar necessity to the Allen charge is that of the mistrial, as seen in this instance. Our appellate courts have recognized the any decision on a motion for mistrial has serious effects and, therefore, trial courts must be granted great latitude and deference in their decisions. "The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. White, 371 S.C. 439,443,639 S.E.2d 160, 162 (Ct. App. 2006)(internal citations omitted). The gravity with which the decision to grant a mistrial is made cannot be underestimated. "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)(emphasis added). In this instance, the "very plain and obvious instance" was the jury's report that it could not reach a unanimous verdict; therefore, the mistrial was issued *sua sponte* and should have remained in effect.

Despite a lack of case law on the subject, Appellant avers it is accepted that once the verdict is read and accepted by the court, a trial is over. In this instance, the court issued a mistrial of its own volition:

THE COURT: Mr. Foreman, I'm receipt -- in receipt of your note that states you cannot reach an agreement, no one will change their mind; is that correct?

THE JUROR: Yes, ma'am.

THE COURT: I have no option but to declare a mistrial at this juncture. Ladies and gentlemen of the jury, you are free to go and you're excused. If you need an excuse or anything for work, the Clerk's Office will be happy to assist you with that.

(App. p.458, lines 15-24) There is a break of about 20 minutes, then the court goes back on the record to describe what happened. The court stated that a signed verdict form was found in the jury room and it was recalling the jury for a poll as to their understanding and intent. Defense counsel strenuously objected. (App. p.460-62) Defense counsel, without the benefit of time to research the issue, made perhaps the most common sensical statement at the time, which was, "Good grief, if they had reached a verdict someone would have said something, should have said something, and it would be improper for the Court to draw that back." (App. p.462, lines 2-4)

At this point, the trial court had no authority to recall the jury. The case was complete and they were dismissed. In fact, several had made it outside before being "chased down in the parking lot by law enforcement." (App. p. 461, lines 5-13) Defense counsel argued that this was, in a sense, coercion - these people had been set free because their duty was over, then forced to return and face questioning. The commonsense argument was also made that the jurors were asked repeatedly if they were able to reach a verdict. Not one person, at any point, made a comment to the effect of "we reached a verdict on one count but were deadlocked on the other." Though, when polled, they reported that this was the case, it is suspect nonetheless.

Appellant admits there is virtually no case law to support his position as this question is one that, understandably and appropriately, does not arise often. The nearest to a satisfactory answer regarding when a trial ends can be found in the idea that a mistrial is not a final order, but rather an interlocutory order and the court retains jurisdiction until the end of the term. See Good

v. Hartford Acc. & Indem. Co., 201 S.C. 32, __, 21 S.E.2d 209, 211-212 (1942) (recognizing an order granting a mistrial is not a final judgment and, instead, is an interlocutory order); *see also* State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) ("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. Patterson, 272 S.C. 2, 4, 249 S.E.2d 770, 771 (1978) (recognizing terms of court generally last for one week).

A "failure" (as described by the Court of Appeals) to cite case law on point when it does not exist (as conceded by Respondent in the underlying case) should not prevent Appellant from having review of a fundamentally unfair occurrence. "In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284(2001). To protect that right, a trial judge is typically afforded broad discretion over how a criminal trial is conducted. State v. Humphery, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981). This discretion, however, should not extend to reassembling a jury when they had dispersed so far as to be called back from the parking lot. This should be the case even if the trial judge stated she "certainly can't imagine that [the bailiffs and security] would be coercive towards a potential juror in this case, and I certainly don't have any indication that that had happened." (App. p.464, lines 14-17) Any coercion would merely compound the fact that jurors had made it all over the courthouse grounds before being dragged back in.

The signed "guilty" verdict form was found in the jury room after the jury was excused. The jurors were required to return after being excused. They were questioned as to the functioning and process of their deliberations. All of these violate the "secret and sacrosanct" nature of the jury

system, to use defense counsel's terms. (App. p. 461, lines 1-4) The inquiry by the court required jurors to violate Rule 606(b), South Carolina Rules of Evidence, which prevents jurors from testifying about matters occurring within the jury deliberation room. In fact, the court put these words in the jurors' mouths, so to speak- "that was what happened in the jury room."

THE COURT: If this is what happened in the jury room, were you - did you come to a verdict on the charge of armed robbery prior to me releasing you for the mistrial and were deadlocked as to the charge of murder? If that is what happened and that is still what you believe, if you would please stand and raise your hand.

(Jurors comply.)

THE COURT: Please let the record indicate that each of the jurors have stood and acknowledged that that was what happened in the -- in the jury room; that they had reached a verdict on the armed robbery charge, but were deadlocked on the murder charge.

(App. p.465, line 25 -p.466, line 11) By doing this, the trial court invaded the privacy and privilege of the jury deliberation room and forced the jurors to testify, even if only by raising their hands, about the actions that took place within.

At no time was it argued that the trial court was acting for the sake of judicial economy or to prevent another trial from occurring. Rather, the language used was that of requirement - "I think we have to question them as to whether or not that's what happened, if they reached a verdict on one indictment and were unable to reach a verdict on the second indictment that was before a mistrial was declared and that would have been what had happened." (App. p.463, lines 9-13) The trial court did consider whether it would be a miscarriage of justice if the jury were released after coming to a verdict; however, the true miscarriage of justice would be if Appellant were not granted a new trial based on the bizarre circumstances and inappropriate remedy at play here. This presents a unique case where a defendant actually desires a mistrial and retrial, as this unjust procedure led him to be sentenced to life imprisonment without the possibility of parole under our strike laws. Each defendant has the right to a trial by a jury of his or her peers, to due process, and

to protection from double jeopardy. It is the trial court's function to protect defendants and ensure these rights are never violated.

However, the trial court in the case at bar did not protect Appellant. In fact, its course of conduct actively harmed Appellant and his future. The case ended when a mistrial was declared and the jury was excused. Just as if a verdict had been read and a sentence handed down, the court's dealings with Appellant were over. Instead, by recalling the jury, the trial court stepped into an area where it had no authority. Certainly, arguments can be made for judicial economy or even simple mistake; however, we must abide by the principles of common law that our country was founded upon and ensure fairness to the accused. Blackstone's Ratio is the idea that it is better for ten guilty men to go free than one innocent man be punished. This has been embodied by the Founding Fathers through current jurisprudence in many ways, including the presumption of innocence and the right to remain silent. Any error made by the court should be resolved in favor of the accused.

CONCLUSION

For the above stated reasons, Appellant respectfully requests that this Court reinstate the mistrial as initially granted.

Respectfully submitted,

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