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Dec 11 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

The Honorable Walton J. McLeod IV, Circuit Court Judge

Appellate Case No. 2022-000333

Reginald Da'Aron Campbell,

Petitioner,

vs.

The State of South Carolina,

Respondent.

REPLY BRIEF

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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 State argues the circuit court judge properly declined to quash the jury in Petitioner's case because Petitioner failed to meet his burden of establishing Abbeville County's jury selection process was systematically excluding black jurors such that they were being unfairly underrepresented on jury panels from which juries were selected. Brief of Respondent at 3. The State's argument relies on defense counsel's lack of evidence presented to the trial court of Abbeville County's jury selection process systematically excluding black jurors.

The State's brief does not address the primary issue in the trial court's ruling on *State v. Patterson*, however, which is that the court improperly considered the wrong group of jurors. 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 trial court should examine the total number of the 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. 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 groups together is a total of eighty jurors with only sixteen of them being African American. That is twenty percent of the jury pool present. This was an underrepresentation of the African American population in Abbeville County and in violation of *State v. Patterson*. The court failed to conduct the proper inquiry as a preliminary step in the *Patterson* analysis.

This ruling was in error and this Court should reverse and remand for 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 argues the ruling denying Petitioner's motion for a directed verdict was proper because there was evidence presented to support a verdict of guilty for either attempted murder or assault and battery of a high and aggravated nature along with possession of a weapon during the commission of a violent crime. Brief of Respondent p. 19. All the State was able to present against Petitioner amounted to mere suspicion of guilt which is not sufficient to survive a motion for a directed verdict. ("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).

The State's argument details the many facts which proved the victim in this case was shot with a gun and sustained serious, life-threatening injuries. That was never in dispute. The only issue in dispute was the identity of the shooter and as to that essential point, the State only presented evidence amounting to mere suspicion. This case presented zero forensic evidence tying Petitioner to the crime. No DNA of Petitioner's was found, 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 Petitioner 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. This case relied on eyewitness testimony of drunken individuals, at a crowded bar, in the middle of the night to convict Petitioner. Not only that, but it was cross-racial identification which is notoriously unreliable evidence. In light of this lack of credible evidence tying Petitioner to the shooting, the trial court erred in denying trial counsel's motion for a directed verdict.

For these reasons, there was insufficient evidence to allow any of the charges to be submitted to the jury. At best, the State has shown some facts that seem suspicious, but without more, that cannot withstand directed 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.

The State argues that the issue of whether the trial court erred in charging the jury on the charge of attempted murder when there was no evidence presented of specific intent

to kill is moot because Petitioner was acquitted by the jury of the charge. While Petitioner was acquitted of the charge, he was still prejudiced by the court's instruction on a charge where the State had no evidence to support it. Just because the jury did not convict on a charge with a total lack of evidence does not mean the trial court did not err in the first place in instructing the jury without cause.

What often occurs in jury trial where the jury deliberates for long periods of time is a compromising jury 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 assault and battery of a high and aggravated nature 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 assault and battery of a high and aggravated nature. 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. The jury should have never been instructed on this charge and ever be subjected to discussing it amongst themselves.

CONCLUSION

Respectfully, Mr. Campbell asks this Court to reverse and remand for a new trial.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Counsel certifies that she has provided a copy of this motion on Mark Farthing of the South Carolina Attorney General's Office via email on this date, December 11, 2023.

/s/ Elizabeth Franklin-Best