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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Eugene C. Griffith. Jr. Circuit Court Judge

Appellate Case No. 2023-000544

THE STATE,

Respondent,

v.

KAREEM LAMELL WALLACE,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

P.O. Box 1525
Orangeburg, SC 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. **The trial court properly denied Appellant's motion for a mistrial.**

2. **The trial court properly denied Appellant's motion for a directed verdict.**

STATEMENT OF THE CASE

Kareem Wallace ("Appellant") was indicted by an Orangeburg County Grand Jury for great bodily injury to a child and unlawful neglect toward a child. Appellant proceeded to trial before the Honorable Eugene C. Griffith, Jr. and a jury from March 29-30th 2023. Joshua Koger, Jr., Esq. represented Appellant at trial. The court declared a mistrial on the great bodily injury charge based on a deadlocked jury, but the jury found him guilty of unlawful neglect. Appellant was sentenced to six years' incarceration and suspended on the service of two, plus thirty months of probation. A timely notice of appeal was filed.

This appeal follows.

STATEMENT OF FACTS

On the morning of August 28, 2018, Angel Prince woke up at approximately six in the morning to feed her three-month-old (Victim) and prepare to take her other daughter (Minor) to school. (Tr. 57). When Prince fed Victim that morning, Victim had normal use of her arms and legs. (Tr. 57). Appellant, Daughter's father, was asleep on the couch in the living room and Prince woke him up to watch Victim while Prince took Minor to school. (Tr. 58). Prince testified that Appellant told her to put Victim in the bouncer in the living room where he was sleeping. (Tr. 58-59). Prince then took Minor to school and returned approximately twenty to thirty minutes later. (Tr. 60). When she returned, Appellant was holding Victim, who was crying, and not moving her arm. Appellant asked Prince what was wrong with Victim's arm when she walked back in the house. (Tr. 62). Prince took Victim into the bedroom and laid her on the bed to see if something was wrong and Victim was not able to move her arm. (Tr. 61-62).

Prince then took her to the emergency room at the Regional Medical Center in Orangeburg. (Tr. 62). They took x-rays of Victim's left arm but ultimately referred her to the Children's Hospital at Richland Memorial Hospital in Columbia. (Tr. 64). At Richland Memorial, they took more x-rays and determined Victim had a fracture in her left humerus, a fracture on the left side of her collar bone, and two fractures in her knee (Tr. 113-145). Matthew Marcus, an expert in Pediatric Radiology, testified that this was nonaccidental trauma. (Tr. 145). Stephanie Schaller, an expert in child abuse and maltreatment of children, testified that the injuries were a result of physical abuse. (Tr. 192-196). Appellant was ultimately charged with unlawful neglect and great bodily injury to a child.

ARGUMENT

1. The trial court properly denied Appellant's motion for a mistrial.

Appellant contends that the trial court erred in failing to grant his motion for a mistrial. Specifically, Appellant argues the trial court erred because a juror expressed he had changed his mind at polling as to his guilty verdict on the unlawful neglect charge and instead of giving a "second" Allen charge, should have granted a mistrial. Appellants argument lacks merit because only one Allen charge was given as to the unlawful neglect charge and a mistrial was not proper.

Relevant Facts

After closing arguments and the jury charge, the jury began deliberations. (Tr. 312). After roughly two and a half hours of deliberation, the jury informed the Court it had reached a verdict on one charge but were not able to come to a verdict on the other one. (Tr. 318). The Court brought the jurors into the courtroom and after the foreman assured the Court of his belief that they were at an impasse and further discussion would be fruitless, the Court gave the jury an Allen[1] charge and sent them back to deliberate. (Tr. 321-323). Forty minutes later, the jury informed the Court it was still deadlocked, and the Court brought them back into the courtroom. (Tr. 324). The trial judge marked the great bodily injury charge as deadlocked, and the jury found Appellant guilty of the unlawful neglect charge. (Tr. 325). The defense requested polling of the jury, at which point a juror indicated that guilty was no longer his verdict. (Tr. 325-327). A brief conversation was had off the record and then the Court gave a very condensed version of an Allen charge and sent the jury back to deliberate. (Tr. 328). After the jury left the courtroom, the defense put on the record the motion for a mistrial it had lodged off the record on the unlawful neglect charge. (Tr. 328-329). The defense reiterated that the Court should have declared a mistrial on both charges, and the Court

[1] Allen v. United States, 164 U.S. 492 (1896).

noted giving the "very slim Allen charge" it gave in response to the juror's changed verdict was its ruling. (Tr. 330). The jury returned thirty minutes later with a unanimous verdict of guilty on the unlawful neglect charge. (Tr. 331).

Standard of Review

"In criminal cases an appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The decision to grant or deny a motion for a mistrial is a matter within a trial court's discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 445, 460 (Ct. App. 2005). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

Analysis

"[W]hether to grant or deny a mistrial is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." State v. Herring, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009). 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. Rowlands, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). This Court "favors the exercise of a **wise discretion of the circuit judge** in determining the merits of such motion in each individual case." State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 309 (1976) (emphasis added) (quoting State v.

Singleton, 167 S.C. 543, 166 S.E. 725 (1932)). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

"The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010).

"Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." State v. White, 371 S.C. 439, 447-448, 639 S.E.2d 160, 164 (Ct. App. 2006). "The granting of a motion for mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009).

"The trial court has several ways to respond to a deadlocked jury, including delivering an Allen charge. In fact, the trial judge has a duty to urge the jury – without pressuring or coercing them – to reach a verdict." State v. Taylor, 427 S.C. 208, 212-213, 829 S.E.2d 723, 726 (2019). "South Carolina approves the use of a modified Allen charge, which must be neutral and even-handed, instruct both the majority and minority to reconsider their views, and cannot be directed at the jurors in the minority." Workman v. State, 412 S.C. 128, 130, 771 S.E.2d 636, 638 (2015). "No set definition of coercion has emerged; instead, we detect its presence by viewing the charge in context and in light of four factors: (1) whether the charge speaks 'specifically to minority

jurors'; (2) whether the charge includes 'you must return a verdict' type language; (3) whether there was an 'inquiry into the jury's numerical division,' which is generally coercive; and (4) whether the time between the charge was given and when the jury returned a verdict demonstrates coercion." Taylor, at 214-215, 829 S.E.2d at 727.

Appellant quotes State v. Robinson[2] in its brief "If a jury, following additional deliberations in the wake of an Allen charge, remains deadlocked, section 14-7-1330 of the South Carolina Code of Laws is triggered." (Initial Brief of Appellant pg. 16). S.C. Code §14-7-1330 states

> When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time **without having agreed upon a verdict**, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law. (Emphasis added).

S.C. Code Ann. §14-7-1330. Here the jury did agree upon a verdict. They came back into the court room deadlocked on the great bodily injury charge and a unanimous verdict on the unlawful conduct towards a child. The juror changed his mind after the agreed upon verdict was announced and therefore this statute was not triggered. Appellant argues that the trial court forced a verdict by giving a second Allen charge and therefore erred by not granting a mistrial on the unlawful neglect charge. While there were two Allen charges given, one was given for the great bodily injury charge and a very slim one was given for the unlawful neglect charge. As mentioned earlier the jury informed the court "they've agreed on a verdict one way or the other on one verdict, but not the other." (Tr. 318). The trial judge brought them into the courtroom where the jury confirmed they were unanimous on one of the charges. (Tr. 320). The trial judge asked "do you think it would be fruitful for you to reach a unanimous verdict on the one that's undecided? Would further

[2] State v. Robinson, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004).

deliberations be fruitful for you-all to continue to deliberate?" (Tr. 321). The foreperson stated that he did not think that would help. (Tr. 321). The trial judge then gave the following Allen charge:

> All right. Now here's what I want to explain to you. This is an instruction when something like this comes up that we – as the court system do. You-all if I remember right, I think both sides – no, I don't know. I didn't help pick the jury, so I'm not sure, but you all were picked from across the county to sit as jurors in this case and you-all have heard the testimony from both sides and you-all have listened to it and you-all have been back there working, weighing the evidence and deciding how to resolve these factual questions as I suggested to you in the instructions.
>
> Now congratulations on reaching one verdict because that's good. On the other one you-all have not reached a consensus on or a unanimous verdict on, I want you to think about this. I want you to – I'm gonna let you go back to the jury room and discuss a little further, and I don't have a time limit on it, a minimum or a maximum, just go back and work a little harder and listen openly to whoever. If you're on the left and somebody else is on the right, listen to how they're basing that opinion and see if you can resolve those differences. Now I do not want you to abandon any firmly held belief. If you believe that the State's met its burden or the State's failed to meet its burden, whichever side you fall on, and you are firmly convinced of that belief, I don't want you to abandon it just to go along. You can't do that. If you have a true belief one way or the other, you're allowed to stick with that. You're not allowed to resolve it just to break the tie. Now if you can resolve your difference and come to a unanimous verdict, then that's great.
>
> Here's what would happen if we can't resolve it potentially is that you-all as twelve citizens of Orangeburg County have listened to this trial. If you-all can't reach a verdict, there's the potential there we'd have to retry this thing, basically present the same case to a different jury who would be in no better position than you-all. You-all have been in a great position because you-all have heard it. You-all have considered it, you've weighed it, you've listened, and you-all – the lawyers and I've talked – have worked for three hours already on this deliberating and so the other jury wouldn't hear anything much different from what you-all have heard. You-all have already gotten this far. If you listen openly, see if you can resolve any differences on the questions of fact, but not give up any belief – moral belief or if you believe a factual belief that you appreciate and enjoy, then if you-all can resolve it, I would like to hope you would.

(Tr. 321-323). The jury went back and deliberated for approximately 30 minutes and sent a note that they were still deadlocked. (Tr. 323-324). The trial judge brought the jury back in where he stated that they were deadlocked on the great bodily injury charge and Appellant was found guilty on the unlawful neglect charge. (Tr. 324-325). While originally it was unknown which charge the

jury was deadlocked on, the note that they were **still** deadlocked after the Allen charge resulting in the deadlock on the great bodily injury charge indicates that prior to the Allen charge the jury had already reached a unanimous verdict on the unlawful neglect charge. The Allen charge was given because they were deadlocked on the great bodily injury charge.

The jury was then polled where a juror changed his verdict. (Tr. 325-327). The judge met with the attorneys off the record and then gave a very slim Allen charge. "I'm gonna ask you-all to retire to the jury room, discuss this a little further and see if you-all might discuss it further. The same situation. Can you resolve your differences? If it's a firmly held belief, do not abandon anyone's individual decision. You're not required to do that, but see if you can resolve this nonunanimous verdict." (Tr. 328). The jury came back approximately twenty minutes later with a unanimous vote. (Tr. 330). Appellant's objection and motion for a mistrial was put on the record that a second Allen charge was given. The trial judge stated "In my understanding of my instruction, that was a very slim Allen charge, but the Allen charge I gave was as to the other one they remained deadlocked on, not to this one which at the time the Court and the parties were informed they had reached a unanimous verdict on the one that's now not unanimous. So I think it's two separate Allen charges in my mind, but I'm gonna stick to my ruling and your record is protected." (Tr. 330).

While this can hardly be considered a full Allen charge, it was the only Allen charge given as it pertains to the unlawful neglect charge. This was not an improper Allen charge because it was not coercive in any way. If anything, it reiterated the fact that they did not have to come to nonunanimous verdict. Further, there was no prejudicial effect of not granting the mistrial and giving an Allen charge because the jury had just come back with a deadlocked verdict, so they

knew that giving a nonunanimous verdict was a possibility. Therefore, the trial judge properly denied Appellant's motion for a mistrial.

2. The trial court properly denied Appellant's motion for a directed verdict.

Appellant argues that the trial court erred in failing to direct a verdict for unlawful neglect. Specifically, Appellant argues that the evidence presented failed to offer proof amounting to anything more than suspicion. Appellants argument lacks merit.

Relevant Facts

After the State rested its case, Appellant moved for a directed verdict arguing that the State did not put forth enough evidence and that there was a question of whether Appellant was the correct defendant in this case. In denying Appellant's motion the trial judge stated that "The state presented evidence that there was an event, an injury. There was testimony that Mr. Wallace was the – in control or custody of the child and close proximity at the time of the alleged incident. That he was identified by the mother, as well as the investigating officer." (Tr. 211-212).

Standard of Review

In an appeal of a ruling involving a challenge to the sufficiency of the evidence in a criminal case, the appellate court must necessarily apply the same standard that should have been applied by the trial judge and view the evidence and all reasonable inferences in the light most favorable to the State. State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012). "In reviewing a refusal to grant a directed verdict, we must view the evidence in the light most favorable to the State and determine whether there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be logically deduced." State v. Pinckney, 339 S.C. 346, 348, 529 S.E.2d 526, 527 (2000). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of

evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Id. The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

Analysis

"On appeal from the denial of a directed verdict, this court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). See also Rule 19(a) SCRCrimP. If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Pinckney, 339 S.C. at 349, 529 S.E.2d at 527.

The task of the trial court is to simply 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).

Appellant was charged with unlawful conduct toward a child. State law provides:

(A) It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child is defined in section 63-7-29 to:

1. Place the child at unreasonable risk of harm affecting the childs life, physical or mental health, or safety;
2. Do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered

S.C. Code Ann. § 63-5-70.

Appellant argues that the State failed to adduce "**substantial**" circumstantial evidence from which a reasonable juror could find Appellant guilty beyond a reasonable doubt. (Initial Brief of Appellant p. 19). If the State presents **any** evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000).

Here, the State produced testimony that Victim had normal function of her arms and legs when Prince left her with Appellant to take Minor to school. (Tr. 57). Victim and Appellant were the only ones present at the house after Prince left. (Tr. 59). When Prince returned Victim was crying and could not move her arm. (Tr. 60-62). Further, Appellant gave a statement to police where he admitted that he grabbed her by her arm, pulled her up and got up to walk into the kitchen for a bottle. (Tr. 163). Victim had a fracture in her left humerus, a fracture on the left side of her collar bone and two fractures in her knee (Tr. 113-145). There was expert testimony that these injuries were nonaccidental and the product of physical abuse. (Tr. 145, 196). There was testimony that these injuries were not there when Victim was left with Appellant and were there after. Therefore, the trial judge did not err in failing to direct a verdict and this court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

P.O. Box 1525
Orangeburg, SC 29116
(803) 533-6252

BY:______________________
AMBREE M. MULLER
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

ATTORNEYS FOR RESPONDENT

April 3, 2024