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May 24 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Daniel E. Martin, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CORNELIUS JEROME STAGGERS,

APPELLANT

APPELLATE CASE NO. 2023-001361

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in allowing an in-court identification of appellant where law enforcement months after the shooting showed the victims a videotape of a prior verbal confrontation between appellant and the victims at another site, and had the victims “confirm” that the man in the verbal confrontation on the video was the same man who subsequently shot into their automobile at another location since this suggestive identification procedure led to a substantial likelihood of an irreputable misidentification?

STATEMENT OF THE CASE

Appellant was indicted at the April 20, 2022, term of the Spartanburg County grand jury for two counts of attempted murder and discharging a firearm into an occupied vehicle. R. *. His case was called to trial on August 15, 2023, before the Honorable Daniel E. Martin, Jr., and a jury. Michael Morin represented appellant. Spencer Smith and Blythe Walters were the assistant solicitors. Tr. 1.

On August 17, 2023, the jury found appellant guilty of one-count of attempted murder, one count of assault and battery in the first-degree, and discharging a firearm into an occupied vehicle. Tr. 314, l. 23 – Tr. 315, l. 13. Based on appellant's prior criminal record, Judge Martin sentenced appellant to life imprisonment without parole for attempted murder. The judge also imposed a ten-year concurrent sentence for assault and battery in the first-degree and for discharging a firearm into an occupied vehicle. Tr. 320, l. 25 – Tr. 321, l. 16.

This appeal follows.

STANDARD OF REVIEW

“[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact.” State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) (finding show-up identification unreliable as a matter of law); see also State v. Traylor, 360 S.C. 74, 81-82, 600 S.E.2d 523, 526-27 (2004) (citing Moore and holding that photographic line-up procedure was “patently suggestive”). “Generally, the decision to admit an eyewitness identification is at the trial judge’s discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error.” Moore at 288, 540 S.E.2d at 448.

“In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” Id. Questions of law are reviewed *de novo*. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

ARGUMENT

The court erred in allowing an in-court identification of appellant where law enforcement months after the shooting showed the victims a videotape of a prior verbal confrontation between appellant and the victims at another site, and had the victims “confirm” that the man in the verbal confrontation on the video was the same man who subsequently shot into their automobile at another location since this suggestive identification procedure led to a substantial likelihood of an irreputable misidentification

Relevant facts

Defense counsel moved to suppress the in-court identifications of appellant as the shooter by Ms. Otey or Mr. Wilson. Tr. 51, l. 25 – Tr. 52, l. 7. The solicitor told the judge that Wilson worked at Crown Health Care, a laundry service that does work for healthcare facilities. He worked there with appellant’s brother, Chris Staggers. They got into a “workplace argument.” Tr. 52, ll. 8-21.

The allegation was that appellant was in the Crown Health Care parking lot when Wilson was leaving for the day. Appellant exchanged terse words with Wilson, who was the supervisor of appellant’s brother, Chris Staggers. “Don’t mess with my brother,” appellant allegedly said to Wilson. Tr. 52, l. 13 – Tr. 53, l. 16.

Ms. Otey was Wilson’s wife. Otey picked Wilson up at work that day, on August 3, 2021. The state’s case was that after Wilson had a confrontation with appellant in the parking lot of Crown Health Care – which was caught on the surveillance tape. The state then alleged that appellant -- in his gold Lexus -- followed Wilson and Otey as they drove home. Sixty days later Investigator Nelson showed Otey and Wilson the Crown Health Care video on his cell phone and apparently asked whether the man in the video altercation was the same man who shot into their

car as they got close to home. Wilson and Otey confirmed appellant was allegedly the shooter. Tr. 52, l. 8 – Tr. 55, l. 7.

The solicitor contended even if the identifications were tainted – as explained infra – that they were not unduly suggestive under the legal standard. Tr. 55, ll. 2-7.

Defense counsel Morin responded that the argument in the parking lot only lasted twenty seconds. Sixty days later, Investigator Nelson talked with Otey and Wilson and showed them the surveillance videotape on his cellphone. He asked: “Is this the person that shot at you?” Tr. 55, ll. 10-21.

Both Otey and Wilson responded that the man on the videotape, appellant, was the man who followed them in his Lexus and shot at them. Morin argued that neither Wilson, the driver, nor Otey, the passenger, had a sufficient opportunity to see the shooter to make an identification. Further, it was sixty days later when Wilson and Otey “confirmed” to Investigator Nelson that appellant was the shooter. There was no six-person photographic line-up, nor any other identification procedure utilized. The identification was made solely from the parking lot surveillance tape when viewed on Nelson’s cellphone. Further, Otey had only seen the shooter in the rearview mirror of their automobile while it was moving down the highway. Tr. 55, l. 22 – Tr. 56, l. 18.

In camera testimony

Charles Wilson was then called as a witness during the identification hearing. Tr. 57, ll. 8-18. Wilson testified that on August 3, 2021, he was the supervisor of appellant’s brother, Chris Staggers. Tr. 57, l. 21 – Tr. 58, l. 6. Wilson did not think that he had met appellant before that day. Wilson remembered as he was leaving work that August afternoon that appellant was waiting in the parking lot for him. Wilson claimed appellant said: “Don’t mess with my brother and

messing with my brother is like playing with your life. So, I was like nobody [is] messing with your brother, your brother was messing with me.” Tr. 58, ll. 9-25.

Wilson remembered that his wife, Otey, picked him up from work that day. Wilson said that they noticed that a gold Lexus RX330 -- he maintained that appellant was driving -- waited in the parking lot for them to leave, and then followed them. Wilson maintained when they stopped at a stoplight near a fire station, gun shots rang out and the glass on his automobile shattered. Wilson said that he pulled Otey down in the front seat, and they ducked so that they did not get shot. Wilson estimated that four to five shots were fired. Tr. 60, l. 6 -- Tr. 61, l. 13.

Wilson identified the shooter as a light-skinned black man with glasses. Tr. 62, ll. 3-9. Wilson also maintained that the shooter was the same man he had argued with in the Crown Heath Care parking lot as he left work. Tr. 64, ll. 3-17.

Lakeisha Otey remembered that she picked up Wilson from work on the afternoon of August 3, 2021. She heard harsh words exchanged in the parking lot between Wilson and another man. Tr. 67, ll. 12-23. Otey said that this other man was very aggressive, and he was arguing with Wilson. Tr. 68, ll. 2-12.

Otey said when they were ready to leave the parking lot in their car, she noticed the man in the Lexus was waiting for them to leave first. She testified the man in the Lexus followed them “all the way until we was almost home.” She remembered when they stopped at the stoplight by the Bunton Institution Church -- as she watched the Lexus in her rearview mirror, that shots were fired. She later confirmed to Nelson that appellant, the man on the Crown Heath Care video was the shooter. Tr. 70, l. 1 -- Tr. 71, l. 4. That was two months after the shooting. Tr. 71, ll. 10-21. Otey admitted that she had never seen appellant before that day. Otey

nonetheless maintained that she was one-hundred percent sure that appellant was the shooter. Tr. 72, l. 12 – Tr. 76, l. 11.

Spartanburg City Investigator Louis Nelson remembered being assigned to the shooting in this case on August 3, 2021. Tr. 77, ll. 15-25. Nelson recalled that Wilson told him that the vehicle following them that day was a Lexus SUV in “the 300 range” -- a 330, 360, or 380. Tr. 78, ll. 1-23.

Nelson said that he later learned that the brother of Chris Staggers, Wilson’s subordinate, was the main suspect in the shooting. Tr. 79, ll. 2-22. The description of the shooter was only a light-skinned black man with glasses. Tr. 79, ll. 11-14.

Nelson later interviewed appellant. Appellant admitted he was in the parking lot of Crown Health Care on August 3, 2021. Tr. 80, l. 17 – Tr. 81, l. 6. However, appellant denied being in a confrontation with Wilson that day. Appellant told Nelson he was at Crown Health Care that day to borrow money from his brother, Chris, or to loan money to Chris. He had no reason to shoot at Wilson or Otey. Tr. 81, ll. 7-22.

Nelson testified that when he later showed Wilson the surveillance tape from the parking lot altercation, Wilson identified appellant “[a]s the person who shot at them. He also identified the gold Lexus as the vehicle that was following them that day.” Tr. 85, ll. 3-10. Otey also identified appellant as the shooter from the video although Nelson said she was much more animate than Wilson about the identification. Tr. 86, ll. 7-15.

On cross-examination, Nelson admitted that Wilson told him that Otey had named a guy named “Carlos . . . as the suspect driving the Lexus...” Tr. 88, ll. 17-22.

Defense counsel Morin then argued that this was an improper identification highly suggestive identification procedure. It was a “confirmation,” and not a legitimate identification.

Morin pointed out that the entire altercation between appellant and Wilson was only twenty to thirty seconds. Law enforcement could have shown Wilson and Otey a photographic line-up instead of utilizing this cell phone prior altercation video confirmation procedure. Tr. 92, l. 17 – Tr. 94, l. 2. The defense therefore objected to any in-court identification by either Wilson or Otey. Tr. 94, ll. 3-7.

The solicitor maintained that under the totality of the circumstances, the identification did not give rise to the likelihood of a misidentification. He argued that Wilson and Otey were close to the man at the time that the shooting occurred. Tr. 94, l. 9 – Tr. 97, l. 7.

Morin responded that Otey and Wilson should be limited to testifying that a similar car followed them from the Crown Health Care parking lot while they drove home. However, a positive in-court identification of appellant would be improper given the facts of this case. Tr. 97, ll. 9-24.

The judge ruled that Wilson and Otey had a reasonable opportunity to view the man in the parking lot, and as the shooter. The judge reasoned they both had identified the shooter as having similar skin color, height, and facial hair to appellant. The judge therefore denied the motion to prevent any in-court identification of appellant. Tr. 97, l. 25 – Tr. 100, l. 2.

Jury In

Lakeisha Otey later identified appellant in-court as being the shooter. She claimed that she was one-hundred percent sure appellant was the man that shot at her and Wilson as they drove down the highway. Tr. 152, ll. 1-14.

Charles Wilson also identified appellant as being the man “sitting in the defendant’s seat with light-skin, gold teeth, glasses, medium build.” Wilson claimed that he was one-hundred percent sure that appellant was the shooter. Tr. 180, l. 10 – Tr. 181, l. 10.

Investigator Nelson admitted that Wilson and Otey had never seen appellant prior to their claim that he was the shooter in this incident. Tr. 228, ll. 7-17. Nelson also acknowledged that about sixty days had passed before he showed Otey and Wilson the videotape on his cellphone from which they made their identifications. Tr. 222, l. 15 – Tr. 223, l. 16.

Discussion

In State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct.App. 2013) this Court noted that an out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. See State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). Further, a witness's subsequent in-court identification is inadmissible “if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.” State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). See, also, Neil v. Biggers, 409 U.S. 188, 198 (1972) (“While the phrase [‘a very substantial likelihood of irreparable misidentification’] was coined as a standard for determining whether an in-court identification would be admissible... with the deletion of ‘irreparable’ it serves equally well as a standard for the admissibility of testimony concerning the out-of-court identification itself.”). State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct.App. 2013).

Trial courts employ a two-pronged inquiry to determine whether due process requires the suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court determines if the identification resulted from an “unnecessarily suggestive” police procedures. Biggers, 409 U.S. at 198–99. See, also, Perry v. New Hampshire, 565 U.S. 228, 232 n. 1 (2012) (“what triggers due process concerns is police use of

an unnecessarily suggestive identification procedure”); Liverman, 398 S.C. at 138, 727 S.E.2d at 426. (the standard – “unduly suggestive” -- means impermissible suggestiveness where the police procedures were “unnecessary and unduly suggestive”).

If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there, and the court does not need to consider the second prong. *See United States v. Sanders*, 708 F.3d 976, 984 (7th Cir.2013) (citing Perry for the proposition that “courts will only consider the second prong if a challenged procedure does not pass muster under the first”).


If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless so reliable that no substantial likelihood of misidentification existed.

In this case, the solicitor conceded the identification procedure was suggestive. He merely argued that it was not so impermissibly suggestive that a substantial likelihood of misidentification was present. Defense counsel Morin correctly argued that the police used the surveillance tape identification from Investigator Nelson’s cellphone to “confirm” that appellant was the shooter. This procedure was unduly suggestive and there was no reason why law enforcement did not present Wilson and Otey with separate six-man photographic line-ups.

This identification procedure was conducive to a substantial likelihood of irreparable misidentification and the in-court identifications that derived from it should not have been allowed. *See Neil v. Biggers*, 409 U.S. 188, 198 (1972); State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). Since these tainted identifications by Wilson and Otey *were the state’s case* against appellant, his convictions should be reversed.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2024.

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APPELLATE CASE NO. 2023-001361

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cornelius Jerome Staggers states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Daniel E. Martin, which was held on August 15-17, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Cornelius Jerome Staggers.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2024.

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APPELLATE CASE NO. 2023-001361

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s)
- (2) Trial Transcript Dated August 15-17, 2023

I certify that this designation contains no matter which is irrelevant to this appeal.



Robert M. Dudek
Chief Appellate Defender

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This 24th day of May, 2024.

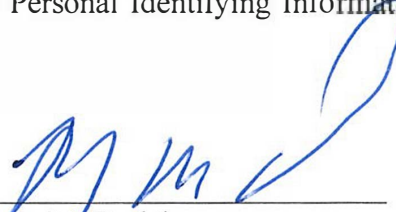
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Cornelius Jerome Staggers, #342367, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 24th day of May, 2024.



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