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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHE LEON RANSOM, JR.,

APPELLANT

APPELLATE CASE NO. 2023-001348

INITIAL BRIEF OF APPELLANT

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1.

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2.

Did the trial judge abuse his discretion by admitting booking photographs of Appellant and his codefendants through the jail records custodian when the evidence was not relevant pursuant to Rule 402, SCRE?

STATEMENT OF THE CASE

A Horry County grand jury indicted Appellant on December 8, 2021 for murder and three counts of attempted murder. R. * (Indictments). His case was called to trial on May 22, 2023 before the Honorable Benjamin H. Culbertson, and a jury. Tr. 1. He was tried jointly with his codefendants, Travontae Mitchell and Don Brown. Tr. 1. Assistant Solicitors Nancy Livesay and Christopher Helms represented the state. Jarrett Bouchette represented Appellant. Clay Pinkerton represented Mitchell. Johnny Gardner represented Brown. Tr. 2.

On May 25, 2023, Appellant was found guilty as indicted. Tr. 794, ll. 4-25. He was sentenced to forty-five years imprisonment for murder and thirty years concurrent for each count of attempted murder. Tr. 806, ll. 6-11.

This appeal follows.

STATEMENT OF FACTS

Shortly after seven o'clock on the evening of September 12, 2020, Tronahz Whittington fatally shot Jamie Johnson as he was driving his Chevy Tahoe to Henry's gas station in Conway. Britney Milan, Jacob Hill, and Orlin Lopez were also in Johnson's vehicle at the time of the shooting. Tr. 218, l. 17 – 219, l. 4. Shamontae Graham testified that on the night of the shooting he was in a car with Tronahz Whittington, Mikkie McLeod, Travontae Mitchell, who is Graham's brother, Don Brown, and Appellant.[1] Tr. 361, ll. 4-23. Whittington had borrowed the car from someone. Tr. 357, ll. 11-18. Graham testified that Don Brown was the driver, Whittington was in the front passenger seat, and Appellant, McLeod, and Mitchell were in the backseat. Tr. 370, l. 19 – 371, l. 25. Graham told the jury, "Jamie Johnson stopped at a stop sign on D Street. Tronahz [Whittington] then told the driver to pull in front of him. So we pulled in front of the victim's Tahoe. Tronahz opened the door, got out the car, and he fired an AR [rifle] at the Tahoe and shot the victim's car in the windshield, and that's when I saw the blood from the victim. I saw, like, his head, like go down. Got hit with the gun." Tr. 358, ll. 9-15. Graham testified that Whittington had an AR-15 weapon. Tr. 374, ll. 4-5. According to Graham, Appellant, Mikkie McLeod, and Travontae Mitchell also got out of the car. Tr. 380, ll. 5-10. Graham claimed three people, including Whittington who it was undisputed fired the fatal shot, fired weapons. Tr. 380, ll. 13-16. According to Graham, Appellant had a .45 caliber pistol and Mikkie McLeod had a 9 mm handgun. Tr. 374, ll. 6-9. Graham testified that there was no plan to kill Jamie Johnson. Tr. 427, ll. 2-3.

Mikkie McLeod testified that as the six of them were on their way to Whittington's mother's house, Whittington recognized Jamie Johnson's Tahoe and said, "There goes Jamie.

[1] Appellant had just turned eighteen years old at the time of the shooting. Don Brown was seventeen years old at the time and Travontae Mitchell was sixteen years old.

He owe me money." Tr. 625, ll. 4-18. McLeod maintained that Don Brown was driving the car. Tr. 629, ll. 9-17. He further claimed that Whittington had an "AR" and Mitchell and Appellant had 9 mm handguns and all three got out of the car and fired. Tr. 628, l. 17 – 631, l. 14.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Collins, 409 S.C. 524, 529-530, 763 S.E.2d 22, 25 (2014) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)) (internal quotation marks omitted). "This Court is bound by the trial court's factual findings unless they are clearly erroneous." Id. at 530, 763 S.E.2d at 25 (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220) (internal quotation marks omitted). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." Id. (quoting State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)) (internal quotation marks omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. (quoting Wise, 359 S.C. at 21, 596 S.E.2d at 478) (internal quotation marks omitted).

"The decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (quoting State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009)) (internal quotation marks omitted).

ARGUMENT

1.

The trial judge abused his discretion by admitting the statement of Appellant's nontestifying codefendant, Travontae Mitchell, which referred to and implicated Appellant, since the statement violated Appellant's Sixth Amendment right to confrontation as interpreted by *Bruton v. United States*, 391 U.S. 123 (1968) and its progeny, and by later denying Appellant's motion for a mistrial when the improper evidence was admitted over Appellant's objection since the evidence was unduly prejudicial to Appellant in this hand of one, hand of all case and its erroneous admission required a mistrial be granted.

Relevant Facts

At the conclusion of the pretrial Jackson v. Denno hearing concerning the admissibility of codefendant Travontae Mitchell's statement to law enforcement, Appellant's counsel asserted that while he did not have an objection to the voluntariness of the statement, he objected to its admission pursuant to Crawford v. Washington, 541 U.S. 36 (2004) because Mitchell's statement constituted testimonial hearsay. He argued, "Any of these statements from this interview cannot be introduced in this trial due to the fact that we now have a codefendant [Appellant] who will not be able to cross-examine the statements that were made [by Mitchell]." Tr. 41, ll. 2-19. The trial judge interrupted counsel and stated he was only ruling on the voluntariness of Mitchell's statement at that time. Tr. 41, l. 20 – 42, l. 3. Accordingly, Appellant's counsel indicated that he would raise the objection at a later time. Tr. 42, ll. 4-5.

Before opening statements, Appellant's counsel again brought the objection to the judge's attention. While he acknowledged the judge likely did not want to hear the objection at that time, counsel wanted to ensure the assistant solicitor did not mention the codefendant's

statement during his opening statement to the jury. Tr. 133, l. 14 – 134, l. 5. The judge clarified whether counsel was referring to the statements given by Travontae Mitchell and Don Brown, Appellant's codefendants. Counsel indicated he was. The judge then asserted, "I mean, the law is pretty clear. If Mr. Ransom [Appellant] is a nontestifying defendant, then any statement given by Mr. Brown or Mr. Mitchell that implicates Mr. Ransom violates his confrontation – rights to confrontation. So any statements given by Mr. Brown or Mr. Mitchell is going to have to redact any statements at all to Mr. Ransom or anything the jury might imply as a reference to [him]." Tr. 134, ll. 6-18. The assistant solicitor maintained the state understood the holding of Bruton v. United States, 391 U.S. 123 (1968) and that it intended to "comply completely." He asserted, "We do not intend to introduce a statement by a non-testifying codefendant implicating the codefendant." Tr. 134, ll. 19-22.

Appellant's counsel again brought up the confrontation objection midtrial. He requested that "before we get [to] any witnesses, that we discuss [the] testimony." He argued the codefendant's statement was not admissible at all pursuant to Crawford. The judge determined that Crawford did not apply, but the holding in Bruton did apply. Accordingly, the judge ruled the state would not be permitted to admit a statement made by a codefendant that implicated another defendant. The judge made clear that a codefendant's statement pursuant to Bruton "can't even say another person." A codefendant's statement cannot say "anything that implicates another person sitting there at the defendant's table." Tr. 396, l. 7 – 400, l. 1. The judge then asked the state, "I mean, is that what y'all - - are we going to do that, play the statement first so the Court can ensure that it doesn't violate Bruton." The assistant solicitor said the state did not intend to admit the recordings of the codefendant's statement. Instead, the state planned to have

the interviewing officers testify as to what each codefendant said "to ensure that there are no Bruton issues." Tr. 400, ll. 2-15.

When Appellant's counsel continued to express concern that the testimony may still violate Bruton dispute precautions, the judge asserted, "We'll have to wait and see. I mean, there are a million possibilities out there but that doesn't make it inadmissible. I mean, if they violate the rules – if they violate Bruton, you'll be entitled to a mistrial – okay? – if it's unduly prejudicial to your client. But I'm not going to rule that a statement that is clearly admissible under the Rules of Evidence and under Bruton is not going to be admitted because you think they might exceed Bruton." Tr. 401, ll. 3-23.

Detective Sean Wydra with the Horry County Police Department interviewed codefendant Travontae Mitchell during the investigation. At the beginning of Detective Wydra's testimony, Appellant's counsel asked to approach the bench. Counsel renewed his objection again pursuant Bruton and Crawford. He asserted, "I'm going to object to any - - in any statements that this witness [Wydra] is going to be introducing that are the statements of a codefendant in this case, Travontae Mitchell, under hearsay, Bruton, and Crawford. If the Court would allow it as a running objection through his testimony, then I don't need to object each time that they - - ." The judge stated he would "allow a running objection." Tr. 502, l. 19 – 503, l. 8. Detective Wydra subsequently explained that Mitchell claimed he was at his mother's house at the time of the shooting and was not involved. After Mitchell denied involvement, Detective Wydra left the interview room and Detective Ken Marcus came in. Tr. 507, l. 2 – 508, l. 2.

Detective Ken Marcus testified that he learned additional information from the investigation while Detective Wydra was interviewing Mitchell. Marcus subsequently went into the interview room to confront Mitchell with this information. When Marcus was asked whether

Mitchell admitted to being involved in the murder of Jamie Johnson, the decedent, Appellant's counsel renewed his objection. Counsel asked the judge to "extend my continuing objection from the prior witness [Wydra]." The judge stated, "You have got your objection. Overruled." Counsel confirmed his objection "continued throughout this testimony." Tr. 513, l. 7 – 514, l. 19.

Detective Marcus then testified that Mitchell admitted he was a participant in the murder of Jamie Johnson; that Mitchell stated he was in the center of the backseat of the vehicle before the shooting; that he "hopped out of the car and hopped back in" during the shooting; that he did not have a weapon and he did not fire a weapon; and that someone's girlfriend picked him up after the shooting. Tr. 514, l. 22 – 516, l. 4. The following exchange then took place between the assistant solicitor and Detective Marcus:

> Q: And he says he didn't have any kind of weapon?
>
> A: Correct. He stated he did not have a weapon.
>
> Q: And he's [Mitchell is] sitting in the middle, *between two people*?
>
> A: He stated he was sitting in the backseat *between two people*.
>
> Q: Okay. And he admits he makes the effort to slide through and hop out of the car?
>
> A: He stated he exited the vehicle for a moment and then got back in the vehicle.
>
> Q: And did he indicate that he exited the vehicle while the shooting was going on?
>
> A: He stated *he exited the vehicle at the time of the shooting and got back in the vehicle*.

Tr. 516, l. 15 – 517, l. 2 (emphasis added).

After the assistant solicitor finished her direct examination, the judge *sua sponte* told the jury he had a matter of law to discuss with the attorneys and excused the jury from the courtroom. After the jury left, the judge asserted, "Mr. Bouchette [Appellant's counsel] had a

running objection to this witness's testimony as to the statements given by one defendant. He said he's sitting in the back of the car between two other people. So how does that not implicate the other defendants in this case?" The solicitor responded, "He didn't name any names." The judge told the solicitor the witness did not have to "name other names." He maintained that in the "leading case" where the witness just said "other person" without naming the defendant the appellate court "held that that violated Bruton because it was easy for the jury, when they said 'other person' to know that he was talking about the codefendants that were being tried with that defendant who gave the statement. Here, he said he's sitting in the backseat between two other people." Tr. 517, l. 14 – 518, l. 8.

The assistant solicitor argued Marcus's testimony did not violate Bruton because in Richardson v. Marsh, 481 U.S. 200 (1987), the United States Supreme Court held that "Bruton can be complied with by redaction." The judge encouraged the solicitor to read State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015), which the judge maintained "does a good explanation of Bruton and everything. Because, at that time, the law was that, as long as they didn't name the defendant, they didn't say the defendant's name, then it didn't violate the defendant's confrontation clause, and the Supreme Court says no. When you can discern from the witness's testimony that the defendant's statement implicates the codefendants, then that is a violation of the codefendant's right - - constitutional confrontation clause." Tr. 518, l. 11 – 519, l. 23. The judge asserted there was no difference between Detective Marcus's testimony that Mitchell said he was "sitting in the backseat between two other people" and the statement in McDonald where the defendant said he was "sitting in the backseat with another person." Tr. 520, ll. 7-11.

Appellant's counsel chimed in that Appellant sought to sever his trial from the trial of codefendant Travontae Mitchell because he feared "these issues may come up." Judge DeBerry granted the severance. However, the state subsequently moved for joinder, which the current trial judge granted. Counsel asserted the state had "bent over backwards to have this as a joint trial" and "created a problem that I don't think you can come back from." Counsel again renewed his objection pursuant to Bruton, McDonald, and Crawford. Tr. 520, l. 17 – 521, l. 18.

Appellant's counsel later maintained that the only option "at this point" is a mistrial. Tr. 522, ll. 18-20. He argued the evidence was "facially incriminating" because the "presence in the back of the vehicle is the thrust of the State's case. They're arguing to the jury that their presence is indicative of criminal intent, criminal actions. So placing them in the backseat is, in the context of this trial . . . [is] incriminating." Tr. 530, ll. 18-25.

The judge ultimately ruled the testimony from Detective Marcus that Mitchell said he was sitting in the "backseat between two people" was improper and "shouldn't have come in." However, the judge found the "error does not rise to the level that would justify granting a new trial [mistrial]" because another codefendant who was not on trial, Shamontae Graham, already testified as to who was in the backseat of the vehicle. Accordingly, the judge found Appellant was not prejudiced by the Bruton violation. Tr. 533, ll. 10-21.

Discussion

The trial judge abused his discretion by admitting the statement of Appellant's nontestifying codefendant, Travontae Mitchell, since the statement violated Appellant's Confrontation Clause rights and Bruton v. United States, 391 U.S. 123 (1968), and by denying Appellant's motion for a mistrial when the .

"The Confrontation Clause of the Sixth Amendment, extended against the States by the Fourteenth Amendment, guarantees the right of a criminal defendant 'to be confronted with the witnesses against him.'" Richardson v. Marsh, 481 U.S. 200, 206 (1987) (quoting U.S. Const. amend. VI). This constitutional right "includes the right to cross-examine those witnesses." Pointer v. Texas, 380 U.S. 400, 401 (1965). "In Bruton v. United States, the United States Supreme Court held that a defendant's Confrontation Clause rights are violated when a nontestifying codefendant's confession that implicates the defendant is admitted during a joint trial." State v. McDonald, 412 S.C. 133, 139, 771 S.E.2d 840, 843 (2015) (citing Bruton v. United States, 391 U.S. 123, 127-28 (1968)). The Court emphasized that these "powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant" are "devastating to the defendant." McDonald, 412 S.C. at 139, 771 S.E.2d at 843 (quoting Bruton 391 U.S. at 135-36). "While appearing to establish a bright-line rule against the admission of a codefendant's confession which incriminates a defendant, the [Bruton] Court acknowledged there are alternatives which may allow the admission of a confession while still protecting a defendant's Confrontation Clause rights and in a footnote, mentioned redaction as one of those alternatives." Id. at 134, 771 S.E.2d at 843 (quoting State v. Henson, 407 S.C. 154, 162, 754 S.E.2d 508, 512 (2014)).

In Richardson v. Marsh, the United States Supreme Court addressed the issue of whether the Confrontation Clause is violated "when the codefendant's confession is redacted to omit any reference to the defendant, but the defendant is nonetheless linked to the confession by evidence properly admitted against him at trial." 481 U.S. at 202. The Court held there was no Confrontation Clause violation "by the admission of a nontestifying codefendant's confession with a proper limiting instruction" when "the confession is redacted to eliminate not only the

defendant's name, but any reference to his or her existence." Id. at 211. The Court expressly declined to opine "on the admissibility of a confession in which the defendant's name has been replaced with a symbol or neutral pronoun." Id. at 211 n. 5.

Eleven years later, the Supreme Court reached that issue in Gray v. Maryland, 523 U.S. 185 (1998). The defendant's name in Gray was redacted by using the word "deleted" or inserting a blank space, and the Court found that "redaction that replaces a defendant's name with an obvious indication of deletion, such as a blank space, the word 'deleted,' or a similar symbol, still falls within Bruton's protective rule" as it "refers directly to the 'existence' of the nonconfessing codefendant." Id. at 192. The Court emphasized that "the obvious deletion may well call the jurors' attention specially to the removed name." Id. at 193. "By encouraging the jury to speculate about the reference, the redaction may overemphasize the importance of the confession's accusation—once the jurors work out the reference." Id. "In other words, the Court brought within Bruton's prohibition those confessions which facially incriminate through inference." McDonald, 412 S.C. at 140-41, 771 S.E.2d at 843 (quoting Henson, 407 S.C. at 164, 754 S.E.2d at 513) (internal quotation marks omitted).

As noted in McDonald, our Supreme Court has followed Gray. McDonald, 412 S.C. at 141, 771 S.E.2d at 843. In State v. Holder, our Supreme Court held the admission of a nontestifying codefendant's oral statement which replaced the defendant's name with "she" violated the Confrontation Clause "because the jury could readily determine that the statement referred to [Holder] as she was the only female defendant." 382 S.C. 278, 285, 676 S.E.2d 690, 694 (2009); See McDonald, 412 S.C. at 141, 771 S.E.2d at 843. In State v. Henson, our Supreme Court held that the state's use of a nontestifying codefendant's confession that replaced the defendant's name (Henson) with "the guy," "he," and "him" violated the Confrontation

Clause because "the jury could infer from the face of [nontestifying codefendant's] confession without relying on any other evidence, that the confession referred to and incriminated Henson [the defendant]." 407 S.C. 154, 166, 754 S.E.2d 508, 514 (2014).

The year after Henson, in State v. McDonald, our Supreme Court held the admission of a nontestifying codefendant's written confession that replaced McDonald's name and the name of a third codefendant with "another person" violated McDonald's confrontation rights under Bruton and its progeny. 412 S.C. at 141, 771 S.E.2d at 844. The Court emphasized that "even a casual reading of the confession makes it apparent that the confession describes the actions of [the nontestifying codefendant] and two other male individuals." Id. It stated, "In light of the fact that there were three male defendants in the trial, the jury was left with the inescapable conclusion that [the nontestifying codefendant's] confession referred to McDonald and [the third codefendant], who were seated at counsel table." Id. Consequently, the Court held the redactions were insufficient to satisfy the demands of the Confrontation Clause. Id.

In this case, Detective Marcus testified that Mitchell, Appellant's nontestifying codefendant, said "he was sitting in the backseat between two people" and "he exited the vehicle at the time of the shooting and got back in the vehicle." Tr. 516, l. 17 – 517, l. 2. It is apparent from Detective Marcus's testimony that Mitchell admitted the involvement of at least two other people who were sitting in the backseat with Mitchell and that at least one of these individuals also got out of the car at the time of the shooting since Mitchell could have only gotten out of the car if the person to his left or the person to his right let him out. Given the other evidence presented and the state's theory of the case that Appellant was sitting in the backseat, the jury was left with the conclusion that Mitchell's confession referred to Appellant. The other evidence presented established that Appellant's other codefendant, Don Brown, was the driver and thus

Mitchell's statement could only have referred to Appellant, not Brown. The reference to Appellant in Mitchell's statement violated Appellant's confrontation rights pursuant to Bruton, which prohibits statements that "facially incriminate through inference." See Henson, 407 S.C. at 164, 754 S.E.2d at 513. Accordingly, the trial judge abused his discretion by admitting Detective Marcus's testimony concerning Mitchell's statement over Appellant's objection. Perhaps this error could have been avoided if the trial judge had agreed to hear Detective Marcus's testimony *in camera* as Appellant's counsel at one point suggested. See Tr. 396, ll. 8-13.

The trial judge acknowledged before the improper evidence was admitted, that if the state violated Bruton, the remedy would be a mistrial. Tr. 401, ll. 14-22. The trial judge abused his discretion when he later denied Appellant's motion for a mistrial after the state violated Appellant's confrontation rights under Bruton. "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, 585-86, 698 S.E.2d 862, 865 (Ct. App. 2010) (citing State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009)). "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." Id. (quoting State v. White, 371 S.C. 439, 447-48, 639 S.E.2d 160, 164 (Ct. App. 2006)) (internal quotation marks omitted). "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." Wilson, 389 S.C. at 586, 698 S.E.2d at 865-66 (quoting White, 371 S.C. 439, 447, 639 S.E.2d 160, 164) (internal quotation marks omitted).

The trial judge found the admission of Detective Marcus's testimony was improper. However, he concluded the error did not rise to the level that would justify granting a mistrial

mainly due to Shamontae Graham's testimony implicating Appellant and the other codefendant's. However, Shamontae Graham was also charged with murder and three counts of attempted murder related to the shooting for which Appellant and his codefendants were being tried. Consequently, Graham was extremely biased and had a motivation to lie. His credibility was highly suspect. Graham was also the brother of Mitchell and clearly sought to protect his brother through his testimony. The only main evidence against Appellant was the testimony of codefendant Mikkie McLeod, who like Graham was charged with the same offenses and had a motivation to lie. Appellant was certainly prejudiced by Mitchell's confession implicating Appellant in the crime, particularly given that this was a hand of one, hand of all case.

Respectfully, this Court should hold the trial judge abused his discretion by admitting Mitchell's statement through Detective Marcus since it violated Appellant's right to confrontation pursuant to Bruton and by later denying Appellant's motion for a mistrial due to the unduly prejudicial nature of the error.

2.

The trial judge abused his discretion by admitting booking photographs of Appellant and his codefendants through the jail records custodian since the evidence was not relevant pursuant to Rule 402, SCRE.

Relevant Facts

The state called Sandy Lowe as a witness midtrial. Lowe testified that she was employed at the J. Reuban Long Detention Center and with the Horry County Sheriff's Office. As an employee of the detention center, Lowe testified that she "keep[s] records for the Sheriff's Office" and that these records included "photographs and information about people that are charged with a crime." The assistant solicitor then asked Lowe if she recognized the jail's photographs of Appellant and his five codefendants, including Mitchell and Brown with whom Appellant was being tried. Lowe said she did and named each of the defendants, including Appellant. The solicitor then offered the booking photographs, which were marked as State's Exhibit Nos. 55-60, into evidence. Tr. 446, l. 22 – 448, l. 7.

Appellant's counsel objected arguing the photographs were not relevant. The solicitor maintained the photographs were relevant to corroborate the "description of the individuals from Britney Milam and Orlin Lopez and Jacob Hill, who were the other occupants of the car the decedent was in when he was killed. Appellant's counsel argued the "defendants are sitting right here. They can see what they looked like. I'm not sure what the relevance is." Counsel for Mitchell likewise argued the photographs were not relevant and would do nothing but inflame the jury. Counsel for Brown chimed in that the "objection is relevance" and the photographs would not "help the jury decide anything." The court ultimately admitted the photographs over objection. Tr. 448, l. 9 – 449, l. 3.

Discussion

The trial judge abused his discretion by admitting booking photographs of Appellant and his codefendants through the jail records custodian since the evidence was not relevant pursuant to Rule 402, SCRE.

As a general rule, all relevant evidence is admissible. Rule 402, SCRE. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE.

"The introduction of a 'mug-shot' of a defendant is reversible error unless: (1) the state has a demonstrable need to introduce the photograph, (2) the photograph shown to the jury does not suggest the defendant has a criminal record, and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication." State v. Traylor, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) (citing State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986); State v. Robinson, 274 S.C. 198, 262 S.E.2d 729 (1980); State v. Denson, 269 S.C. 407, 237 S.E.2d 761 (1977)). "The rationale for this holding is that such photos are prejudicial because they imply a defendant's prior bad acts." State v. Traylor, 360 S.C. at 85 n. 12, 600 S.E.2d at 528 n. 12 (citing State v. Denson, 269 S.C. 407, 237 S.E.2d 761 (1977)). "We strongly admonish the state against utilization of such photos except in the rarest of cases." Traylor, 360 S.C. at 84, 600 S.E.2d at 528.

The photographs were simply not relevant. As Appellant's counsel correctly argued, the jury did not need to see photographs of the defendants, Appellant, Mitchell, and Brown, as the three were present in the courtroom throughout the trial. Moreover, McLeod and Graham

testified in front of the jury and thus were present for the jury to view. Finally, there were other photographs of Whittington from social media that were admitted without objection. Accordingly, there was no need to admit the defendants' mugshots. The booking photographs did not make the existence of any fact that was of consequence to the determination of the action more probable or less probable than it would have been without the evidence. See Rule 401, SCRE.

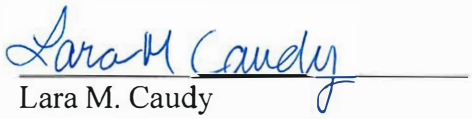
Moreover, the state had no demonstrable need to introduce the booking photographs. The photographs were clearly mugshots given that they all had the same background, of chairs bolted to the ground, and were taken from the same angle. More importantly, however, they were introduced through Sandy Lowe, who testified she was the records custodian at the J. Reuben Long Detention Center and worked for the sheriff's office. Lowe stated her records included "photographs and information about people that were charged with a crime." She then named the defendants as the individuals in the mugshots. Tr. 446, l. 22 – 447, l. 22. The photographs suggested Appellant (and each of his codefendants, in a hand of one, hand of all case) had a criminal record, and they were introduced in such a way as to draw attention to their origin or implication.

Consequently, the trial judge abused his discretion by admitting the booking photographs of Appellant and his codefendants over objection. Respectfully, this Court should reverse Appellant's convictions and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of July, 2024.