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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2023-000634

THE STATE,

Respondent,

vs.

CHRISTOPHER ADAM COMER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Federal Cases:

Other State Cases:

STATEMENT OF ISSUE ON APPEAL

"Whether the trial court erred denying appellant's motion for a mistrial, or in the alternative removing the juror, where prior to the start of trial a juror admitted they saw appellant get out of the county jail vehicle and enter the courthouse?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow abuse his broad discretion by declining to either declare a mistrial or remove a seated juror from the jury when Appellant failed to establish the juror's brief and isolated glimpse of him exiting a detention center transport van outside the courthouse resulted in any actual prejudice under the circumstances involved?

STATEMENT OF THE CASE

In May of 2022, Appellant Christopher Adam Comer was arrested in connection to a home invasion that had occurred roughly eight months earlier at a residence located in Denmark, South Carolina.[1] In March of 2023, the Bamberg County Grand Jury indicted Appellant for first-degree burglary.[2] On April 18, 2023, a jury trial was commenced in the Bamberg County Court of General Sessions with the Honorable Brooks P. Goldsmith, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a twenty-three-year term of imprisonment. Appellant then timely filed a notice of appeal.

[1] Although he was not arrested until May of 2022, the warrant for Appellant's arrest was issued within days of the incident. (Arrest Warrant).

[2] As reflected in the indictment, the grand jury's true bill decision was made on March 3, 2023, but the next general sessions term of court in Bamberg County was not until April of 2023. (Indictment).

STATEMENT OF FACTS

On the morning of September 1, 2021, Brittany O'Berry, who was pregnant at the time, was asleep inside her home when she was suddenly awakened by the sound of glass breaking. (Tr. pp. 50-53). By that point in the morning, O'Berry's mother and brother, who both also lived at the home, had already left for work for the day, and there were no longer any vehicles parked outside in the residence's driveway. (Tr. pp. 52-53; pp. 68-69).

Concerned, O'Berry headed in the direction of the noise to investigate and found the door to her brother's room closed. (Tr. p. 53). She responded by trying to open the door, and, when she did, it felt to her like someone inside the room was pushing back on the door to keep it closed. (Tr. p. 53). Nonetheless, despite the resistance, O'Berry was able to push her way inside. (Tr. pp. 53-54).

Upon doing so, O'Berry encountered Appellant, whom she knew from having previously worked with him, standing alone inside her brother's room. (Tr. pp. 53-54; p. 60). In addition to that unexpected sight, she also noticed the room's window was broken, and there was broken glass from it on the floor. (Tr. pp. 56-57).

In response to those shocking discoveries, O'Berry quickly cried out for her minor daughter, who also lived in the home, to call the police. (Tr. p. 52; p. 54). Appellant responded by scurrying back out the broken window, only stopping to yell "fuck you" at O'Berry as he fled. (Tr. p. 54).

Despite Appellant's escape, O'Berry had no trouble identifying him as the burglar since she knew him and clearly saw him. (Tr. p. 51; p. 54; pp. 57-58; p. 60; p. 65). As a result, Appellant was arrested and indicted for first-degree burglary, and he ultimately elected to proceed forward to trial. (Tr. p. 4; p. 6; Arrest Warrant; Indictment).

During trial, O'Berry recounted what occurred on the date of the incident and identified Appellant in the courtroom as the burglar. (Tr. pp. 50-65). In addition to that, O'Berry's mother, Stacy Anderson, confirmed she and O'Berry's brother left for work on the morning of the incident, which meant there were no vehicles remaining in the home's driveway. (Tr. pp. 68-69). Furthermore, evidence of two of Appellant's prior burglary convictions was introduced for the limited purpose of proving a required element of the indicted offense.[3] (Tr. pp. 69-70).

Following the presentation of that testimony and evidence, the case was submitted to the jury. (Tr. pp. 118-119). Just over half an hour later, the jurors unanimously convicted Appellant as indicted. (Tr. pp. 118-119).

[3] Appellant—an apparent serial burglar—had multiple prior convictions for burglary and an earlier attempted burglary conviction along with other convictions for non-burglary offenses. (Tr. pp. 69-70; p. 125).

ARGUMENT

The trial judge did not abuse his broad discretion by declining to either declare a mistrial or remove a seated juror from the jury because Appellant failed to establish the juror's brief and isolated glimpse of him exiting a detention center transport van outside the courthouse resulted in any actual prejudice under the circumstances involved.

Relevant Facts

On the first day of Appellant's trial, the trial judge conducted the jury selection process with the parties. (Tr. pp. 15-23). At the conclusion of that process, a petit jury of twelve jurors and one alternate was selected. (Tr. p. 23). The proceedings were then recessed for the day. (Tr. p. 25).

The next morning, defense counsel began the day by moving for a mistrial. (Tr. p. 29). In doing so, defense counsel asserted he had been alerted—by Appellant—one of the white female jurors "potentially" saw Appellant getting out of the detention center transport van as the juror was heading into "the trailer for the jury room."[4] (Tr. pp. 29-30). Defense counsel further maintained the "prejudice" of that occurrence "would outweigh its probative value." (Tr. p. 30). Conversely, the solicitor argued the circumstances described did not warrant a grant of a mistrial since the jurors obviously knew Appellant had been arrested and incarcerated at some point by virtue of the trial itself.[5] (Tr. p. 30).

At that point, the trial judge had all the white female members of the jury, which consisted of three jurors and the alternate, brought into the courtroom, and he asked them if any had seen Appellant that day at any time other than in the courtroom. (Tr. p. 37). One juror—

[4] At the time of trial, a modular unit outside the courthouse was being used as the jury room. (Tr. p. 32).

[5] Indeed, demonstrating the non-controversial nature of such information, defense counsel later remarked to the jurors as part of his opening statement that Appellant had been "arrested" and "put . . . in jail" after his victim identified him as the burglar. (Tr. p. 48).

Juror # 202—indicated she had. (Tr. pp. 37-38). Based on that response, the trial judge swiftly excused the others to allow Juror # 202 to explain what she had seen. (Tr. pp. 38-39).

Once the others were gone, Juror # 202 indicated she "got a *glimpse*" of Appellant getting out of a van "out the corner of [her] peripheral vision" when she was walking up the ramp to the jury room that morning. (Tr. pp. 38-39) (emphasis added). Regarding that van, Juror # 202 stated it had "police symbols" on it, and she affirmed she believed it was the one used to bring people over from the detention center. (Tr. p. 39). However, Juror # 202 confirmed she made "no eye contact" with Appellant and had not spoken with him. (Tr. pp. 38-39). In fact, Juror # 202 was not even certain Appellant was the person she glimpsed, and she believed the person she had seen may have simply been wearing a "button-down shirt." (Tr. pp. 38-39). Beyond that, Juror # 202 verified she had not communicated what she had observed to any of the others on the jury, and she confirmed it would not affect her "at all." (Tr. pp. 39-40).

Following Juror # 202's explanation, the trial judge gave the parties an opportunity to propose any additional questions they wished to be asked of the juror, and none were suggested. (Tr. p. 40). Juror # 202 then retired back to the jury room with the others. (Tr. p. 41).

After she was gone, defense counsel moved for her to be replaced with the alternate. (Tr. p. 41). As support for that motion, defense counsel conceded Juror # 202 had indicated she would not be affected by what she saw but nonetheless maintained she had "clearly" seen Appellant being transported from the detention center, which he argued was prejudicial. (Tr. p. 41). In rebuttal, the solicitor noted: (1) Juror # 202 indicated she was unimpacted by what she saw and did so in a "genuine" manner; (2) she did not report seeing any handcuffs or anything similar and, instead, had stated the person she glimpsed was wearing ordinary clothing; and (3) she explained she only saw the person "out of the corner of her eye" such that she was not even

certain it was Appellant. (Tr. p. 42). Based on that, the solicitor contended Juror # 202's ability to serve on the jury had not been prejudicially impacted. (Tr. pp. 42-43).

Upon considering the arguments of counsel, the trial judge agreed with the solicitor's remarks and declined to remove or replace Juror # 202. (Tr. p. 43). The trial then proceeded forward, and the jury ultimately convicted Appellant as indicted later the same day at the conclusion of the succinct proceedings. (Tr. p. 43; pp. 118-120).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a decision as to whether to dismiss a seated juror and replace that juror with an alternate, an appellate court will not reverse such a decision on appeal absent a showing of a prejudicial abuse of discretion. State v. Bell, 374 S.C. 136, 147, 646 S.E.2d 888, 894 (Ct. App. 2007); see State v. Simmons, 360 S.C. 33, 43, 599 S.E.2d 448, 452 (2004) (recognizing decisions regarding the removal of jurors rest in the sound discretion of the trial judge); State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974) ("[T]he general principle that error must be prejudicial in order to grounds for reversal applied to rulings on excusing a juror."); see also State v. Simpson, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996) ("A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence."). Similarly, when reviewing a decision regarding a mistrial, an appellate court will not disturb a trial judge's discretionary ruling on such a matter absent a prejudicial abuse of discretion. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000); see State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) ("In order to receive a mistrial, the defendant must show error and resulting prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are

controlled by an error of law." State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted).

Analysis

In the case sub judice, Juror # 202 seemingly caught a brief "glimpse" of Appellant *outside the courthouse* with her peripheral vision while he was exiting what she thought was a detention center transport van. Now, based purely on that brief and isolated occurrence alone, Appellant—while relying heavily on the United States Supreme Court's decision in Deck v. Missouri, 544 U.S. 622 (2005)—contends the trial judge had no choice but to either grant a mistrial in his case or "at minimum" remove Juror # 202 from the jury and reversibly erred by failing to do so. As support for that contention, Appellant speculates Juror # 202 "likely"—despite the juror's testimony on the matter and despite the complete absence of any testimony or evidence establishing anything to the contrary—saw him handcuffed, shackled, and in prison garb as he was exiting the detention center transport van.[6] Then, relying on that unsupported speculation, Appellant maintains what occurred in his case unyieldingly required the grant of a mistrial or the removal of the juror because that brief occurrence was purportedly "not insubstantial" and "very likely impacted the juror's result." Appellant's contention is not correct.

Unquestionably, 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); see Harris, 340 S.C. at 63, 530 S.E.2d at 627 ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and

[6] In his statement of the issue on appeal, Appellant goes further and suggests Juror # 202 "admitted[ly]" saw him exit the detention center transport van *and* enter the courthouse. (App. Br. p. 1). No such admission occurred, though, and Juror # 202 never said anything about seeing the person she observed actually enter the courthouse. (Tr. pp. 38-40).

indifferent jurors."). Pursuant to that right, a defendant is guaranteed—amongst other things—a trial by a panel of impartial, indifferent, unbiased jurors. State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008); see also State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998) ("It is the duty of the trial judge to see that a jury of unbiased, fair and impartial persons is impaneled.").

As has long been recognized, the routine use of visible shackles in a courtroom during trial without a special need is constitutionally forbidden as such a practice could jeopardize the fairness of the trial. Deck v. Missouri, 544 U.S. 622, 628-629 (2005). Likewise, a court is constitutionally forbidden from *compelling* a defendant to wear prison garb during a trial for a similar reason. Estelle v. Williams, 425 U.S. 501, 503 (1976). Such constitutional prohibitions are meant "to protect defendants *appearing at trial* before a jury" and serve to ensure the fairness of the proceedings is not compromised. Deck, 544 U.S. at 626 (emphasis added); Estelle, 425 U.S. at 503.

Importantly though, as our Supreme Court long ago recognized, there is a marked difference between jurors seeing a defendant in restraints or other signs of custody *outside* a courtroom versus *inside* one. State v. Moore, 257 S.C. 147, 152, 184 S.E.2d 546, 549 (1971). Due to that obvious and marked difference, state and federal courts that have been confronted with situations where a member or members of a jury briefly observed a criminal defendant in a custodial situation *outside* the courtroom itself have consistently—and seemingly universally—deemed such occurrences to be nominally prejudicial if prejudicial at all and not sufficient standing alone to render a trial unfair. See, e.g., United States v. Chrzanowski, 502 F.2d 573, 576 (3d Cir. 1974) ("The fact that jurors may briefly see a defendant in handcuffs is not so inherently prejudicial as to require a mistrial."); United States v. Jackson, 423 F. App'x 329, 331

(4th Cir. 2011) (concluding jurors' brief and inadvertent view of a defendant in a jail jumpsuit and shackles while he was being transported to the courthouse on the second day of trial did not amount to prejudice requiring reversal); United States v. Lattner, 385 F.3d 947, 959 (6th Cir. 2004) (instructing a brief juror observation of a defendant in handcuffs while the defendant is being escorted outside the courtroom does not create the level of prejudice necessary to warrant a new trial); United States v. Fahnbulleh, 748 F.2d 473, 477 (8th Cir. 1984) ("The danger of prejudice to defendants is slight where a juror's view of defendants in custody is brief, inadvertent and outside of the courtroom."); Castillo v. Stainer, 983 F.2d 145, 148 (9th Cir. 1992) (instructing a juror's brief and accidental viewing of a defendant in restraints during transport to the courtroom does no harm that rises to a constitutional level); State v. Apelt, 681 P.2d 634, 646 (Ariz. 1993) ("[T]he brief and inadvertent exposure of a handcuffed or shackled defendant to members of the jury outside the courtroom is not inherently prejudicial, and the defendant is not entitled to a new trial absent a showing of actual prejudice."); Knight v. State, 76 So. 3d 879, 886-887 (Fla. 2011) (reiterating a juror's brief or inadvertent view of a defendant in shackles is not so prejudicial as to warrant a mistrial); Moss v. Commonwealth, 949 S.W.2d 579, 582-583 (Ky. 1997) ("We have repeatedly held that the inadvertent viewing of the defendant in either handcuffs or another restraint for the sole purpose of being taken to or from the courtroom is not automatically reversible error."); State v. McMillian, 779 S.W.2d 670, 672 (Mo. Ct. App. 1989) ("It has long been recognized in this state that 'a brief, inadvertent exposure of the jury of a handcuffed defendant while he is being taken from one place to another does not deprive defendant of a fair trial." (citation and internal quotations omitted)); State v. Blankenship, 657 N.E.2d 559, 571 (Ohio Ct. App. 1995) ("A defendant's right to a fair trial is *not prejudiced* by the use of handcuffs or shackles where the jurors' view of the defendant in

custody is brief, inadvertent, and outside of the courtroom." (emphasis added)); Commonwealth v. Johnson, 500 A.2d 173, 175 (Pa. Super. Ct. 1985) ("[I]t is clear that a brief, accidental sighting of a defendant in custodial trappings, without more, is not so inherently prejudicial as to significantly impair the presumption of innocence to which a defendant is entitled." (citation and internal quotations omitted)). Accordingly, when such a brief and inadvertent situation occurs, a defendant must establish *actual* prejudice to be entitled to any relief. Holbrook v. Flynn, 475 U.S. 560, 572 (1986); see United States v. Jones, 468 F.3d 704, 709 (10th Cir. 2006) ("In itself, a juror's brief view of a defendant in shackles does not qualify as a due process violation worthy of a new trial. Such an incident must result in prejudice to violate due process, and the burden is on the defendant to show such prejudice." (citations omitted)); State v. Johnson, 710 P.2d 1050, 1054 (Ariz. 1985) ("The question is whether the defendant was prejudiced by what the jury saw, not the mere fact that it was seen.").

With that in mind and looking to what occurred in Appellant's case, Juror # 202 only briefly and inadvertently spotted Appellant *outside the courthouse*—which was a factor fundamentally distinguishing his case from Deck—as he was being removed from the detention center transport van, and, due to fleeting and indirect nature of her glimpse, the juror was not even certain the individual she saw was, in fact, Appellant. Cf. State v. Speer, 212 P.3d 787, 801 (Ariz. 2009) ("Because Speer was not restrained during trial, the considerations that led the Supreme Court to find inherent prejudice in Deck are not present."). And, when describing what she saw, Juror # 202 did not report seeing any handcuffs, shackles, or other restraints, and she did not even think the person she glimpsed was wearing anything other than a bog-standard button-up shirt. Moreover and perhaps most significantly, Juror # 202 unequivocally confirmed what she briefly saw would not affect her "at all." Thus, what occurred in Appellant's case was

brief, unremarkable, and isolated, and nothing supported a conclusion it had—or reasonably could have had—any impact "at all" on the only juror involved.[7]

Under such circumstances, Appellant could not and did not meet his heavy burden of establishing he suffered actual prejudice by what happened with Juror # 202, and, therefore, the trial judge did not abuse his broad discretion by declining to grant the extreme remedy of a mistrial in Appellant's case. See State v. Carrigan, 284 S.C. 610, 614, 328 S.E.2d 119, 121 (Ct. App. 1985) ("The power to declare a mistrial is generally left to the sound discretion of the trial judge and ought to be exercised with the greatest of caution, only for plain and obvious causes."); see also Moore, 257 S.C. at 152-153, 184 S.E.2d at 548-549 (concluding a mistrial was not warranted even though two or three jurors saw the defendants being shackled and prepared for transport to jail); cf. United States v. Jackson, 549 F.2d 517, 527 n. 9 (8th Cir. 1977) ("Unlike the situation where a defendant is tried in jail garb, . . . far less danger of prejudice inheres in a situation where a juror's vision of a defendant in jail uniform is fleeting and outside the courtroom." (citations omitted)); People v. Walker, 526 N.Y.S.2d 856, 857 (N.Y. App. Div. 1988) ("In any case, the brief and inadvertent viewing of the defendant by the jurors was by

[7] Indeed, even if Juror # 202 had directly seen Appellant in some form of custodial restraints while he was being transported to the courthouse, such an observation would have in no way revealed anything to her outside of what is commonly known and expected for a defendant whose criminal trial is about to begin. See Holbrook, 475 U.S. at 567 ("[J]urors are quite aware that the defendant appearing before them did not arrive there by choice or happenstance."); Dupont v. Hall, 555 F.2d 15, 17 (1st Cir. 1977) ("With the plethora of court news appearing daily in the press, even the most unsophisticated juror must know that defendants indicted for serious crimes, and often even for minor ones, may have to post bail. They must also know that many defendants lack the resources to accomplish this. Under these circumstances we cannot think that the emotional impact of seeing the defendant in custody is necessarily hostile[;] it may be quite the reverse."); United States v. Leach, 429 F.2d 956, 962 (8th Cir. 1970) ("It is a normal and regular as well as a highly desirable and necessary practice to handcuff prisoners when they are being taken from one place to another, and *the jury is aware of this*." (emphasis added)); Wharton v. Chappell, 765 F.3d 953, 965 (9th Cir. 2014) ("[J]urors know that, as a matter of routine, some defendants are in custody during trial and that security needs during transport demand restraints.").

itself, insufficient to deny the defendant a fair trial[.]"). Likewise, since Juror # 202's impartiality was not likely to have been affected by such an insignificant event *and* she credibly asserted she was not affected "at all," the trial judge did not abuse his broad discretion by accepting Juror # 202's testimony and declining to remove the impartial juror from the jury. See State v. Maxey, 218 S.C. 106, __, 111, 62 S.E.2d 100, 102 (1950) ("The findings of the trial court on questions of fact relating to the fitness of a juror are conclusive, and will not be disturbed on review unless manifestly erroneous. This principle of law is so well established that it hardly becomes necessary to cite authority to sustain it."); see also Dennis v. United States, 339 U.S. 162, 170-171 (1950) ("We must credit [the jurors'] representations, and that is particularly so in the absence of any evidence which would indicate an opposite opinion among [the challenged jurors]."); cf. United States v. Pina, 844 F.2d 1, 8 (1st Cir. 1988) ("Here, only three of the jurors saw the defendant in shackles and the exposure was very brief. Each of the three jurors was individually questioned by the judge and each insisted that the encounter would have no effect on their capacity to remain unbiased. They were also instructed not to discuss the matter with anyone. Under these circumstances, the exposure was not 'so inherently prejudicial' as to deny the defendant a fair trial."); Adams v. State, 80 So. 3d 426, 427 (Fla. Dist. Ct. App. 2012) ("[A]fter individual inquiry, the judge determined one juror briefly observed the defendant in the hallway while the defendant was shackled. The juror indicated the brief sighting would not impact his ability to be fair. Under these circumstances, there was no abuse of discretion in the denial of the defendant's motion for mistrial."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

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