STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ADAM COMER,

APPELLANT

APPELLATE CASE NO. 2023-000634

FINAL BRIEF OF APPELLANT

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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?

STATEMENT OF THE CASE

On April 17, 2023, a Bamberg County grand jury indicted appellant for burglary, first degree. R. 132. On April 17, 2023, appellant's case was called to trial before the Honorable Brooks Goldsmith and a jury. R. 1. David Hayes and Wallis Alves represented appellant. R. 1. The state was represented by deputy solicitor, David Miller, and assistant solicitors, Leigh Staggs and Tyler Sanderlin. R. 1.

Appellant was convicted as indicted. R. 120, ll. 1-5. Judge Goldsmith sentenced appellant to twenty-three years' imprisonment. R. 130, ll. 9-12; R. 135.

This appeal follows.

STANDARD OF REVIEW

A trial court's decision denying a mistrial will be reversed on appeal if the denial amounts to an abuse of discretion. *State v. Rowlands*, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). "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 [court]." *Id*. at 457–58, 539 S.E.2d at 719 (internal quotations and citations omitted).

ARGUMENT

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.

Relevant facts

After the jury was selected, but before the start of trial, defense counsel moved for a mistrial because appellant informed him one of the jurors had seen appellant exiting the jail van that was clearly marked "Bamberg County [Jail]" as she entered the jury room.[1] R. 29, l. 19-30, l. 3.

The court asked the juror if she had seen appellant anytime that day other than in the courtroom. R. 37, ll. 12-19. The juror admitted she saw appellant get out of a van as she walked up the ramp to the jury room. R. 37, l. 12-38, l. 25. She specified the van was "the one that brings them over, I guess, from the jailhouse." R. 39, ll. 3-4. The court asked further about the van and the juror described the vehicle:

> It had the – it looked like it was – I don't know what it's called. It looked like the one that you would bring somebody over in, you know. It had police symbols on the side and wording. It was just like a bus-looking – I don't know exactly what it's called.

R. 39, ll. 9-16. She described appellant as wearing "maybe a button-down shirt" that was "maybe a darker color." R. 39, ll. 19-20. When asked, the juror answered she had not talked about what she saw with any other juror and she stated it would not affect her service on the jury. R. 39, l. 21-40, l. 4.

Defense counsel argued the undue prejudice of the juror having seen appellant the

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1 According to the transcript a trailer or modular unit outside of the courthouse was used as the jury room. R. 29, ll. 22-23; 32, ll. 1-7.

morning of trial exiting a van clearly marked as jail transportation warranted a mistrial. R. 30, ll. 3-6. Counsel then asserted that at minimum this juror should be removed from the jury and replaced with an alternate because the juror admitted to having seen appellant getting out of the jail van and under current caselaw a juror should not see a defendant cuffed, shackled, in prison clothes, or having any other affiliation with detention prior to trial. R. 41, ll. 12-21.

The solicitor asserted that this situation did not "rise to the level" of granting a mistrial. R. 30, ll. 8-10. She averred while it was not "ideal" the jury was obviously aware appellant had been arrested in connection to this charge. R. 30, ll. 8-18. In response to defense counsels alternative remedy to remove the juror the state relied on the juror's statement that it would not affect her service. The solicitor also argued there was no indication that the juror even saw appellant shackled or in prison clothes. R. 42, ll. 3-25.

The court stated that it agreed with the state's argument and denied the motion to substitute or disqualify the juror. R. 43, ll. 2-4.

Discussion

The legal system "presumes that the defendant is innocent until proved guilty." *Deck v. Missouri*, 544 U.S. 622, 630 (2005) (citing *Coffin v. United States*, 156 U.S. 432, 453 (1895) (presumption of innocence "lies at the foundation of the administration of our criminal law")). "Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process." *Id*.

The Court in *Deck* held:

> [J]udges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of

> purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve. The routine use of shackles in the presence of juries would undermine these symbolic yet concrete objectives. As this Court has said, the use of shackles at trial affront[s] the dignity and decorum of judicial proceedings that the judge is seeking to uphold.

Deck v. Missouri, 544 U.S. 622, 631 (2005) (internal citations omitted).

This situation required, at minimum, removal of this juror as defense counsel argued. The state responded, and the court appeared to agree, there was no indication that the juror saw appellant "cuffed, shackled, in a jumpsuit." However, it is likely the opposite was true. Appellant was exiting the jail van upon arrival and was almost certainly in jail clothes, cuffed, and shackled before he entered the courthouse. The remote, maybe even unconscious, knowledge of appellant's prior arrest and the actual visual of appellant cuffed, shackled, in prison clothes, exiting a jail van are vastly different.

"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. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct.App.2009) (internal citations omitted). Other than stating it agreed with the state's arguments, the trial court made no findings and gave no reasoning on the record regarding the ruling.

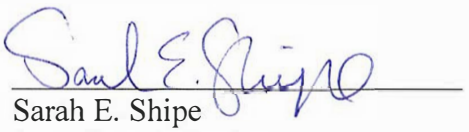
A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial. *Id*. "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." *State v. White*, 371 S.C. 439, 447–48, 639 S.E.2d 160, 164 (Ct. App. 2006) (emphasis added). A juror seeing appellant exit jail transportation was not insubstantial.

The visual of appellant appearing cuffed, shackled, and in prison clothes exiting a county jail vehicle very likely impacted the juror's result. "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." *Id*. at 447, 639 S.E.2d at 164.

The trial court erred in failing to grant appellant's motion for a mistrial or in the alternative removing the juror that witnessed appellant exiting a vehicle clearly marked as jail transport. The error, which occurred before any testimony had been given, infected the trial. The juror having seen appellant get out of a jail van, likely shackled, certainly handcuffed undermined the presumption of innocence that appellant was entitled to under the Due Process Clause.

CONCLUSION

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



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of August, 2024.

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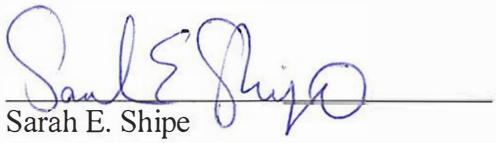
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

August 12, 2024.



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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 Final Brief of Appellant in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 12th day of August, 2024.

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