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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALONZA D. MARABLE,

APPELLANT

APPELLATE CASE NO. 2023-000988

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in refusing to grant a mistrial when the juror's questions before the conclusion of the evidence indicated they engaged in premature deliberations?

STATEMENT OF THE CASE

Appellant was indicted in Charleston County for attempted murder, ABHAN, and murder. On June 12, 2023, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Daniel Cooper and Kelly Barber represented the State. R. 1. Chad Shelton represented appellant. R. 1. The jury acquitted appellant of attempted murder, but found him guilty of ABHAN and Murder. Judge Jefferson sentenced appellant to a total of thirty years' imprisonment. This appeal follows.

STANDARD OF REVIEW

This case presents an issue of law and the standard is *de novo*.

ARGUMENT

The trial court erred in refusing to grant a mistrial when the juror's questions before the conclusion of the evidence indicated they engaged in premature deliberations.

Factual Background

On April 18th, 2020, a shooting occurred in Charleston County that resulted in the death of the decedent, LJ. R. 44. Erica McKelvey heard eight to nine gunshots and called 911. R. 44-45. When she walked out to see where her daughter was, she saw a body lying in the field. The body was her cousin, the decedent. R. 44-45.

Nyaja McKelvey saw a car circling the neighborhood before the shooting. R. 55-56. The car was a dark colored sedan. R. 56. Another police officer at the scene spoke with a witness who said he saw a black Ford Focus leaving at a high rate of speed. R. 73.

The first police officer on the scene described it as a hectic and chaotic situation. R. 63-64. The officer found a lifeless victim with a gunshot wound to his head. R. 63. At an adjacent trailer, he located a second person (Martin Jimenez, who did not testify) with a gunshot wound to the head. R. 63. Jimenez was bleeding from the top of his scalp. R. 64.

A couple of days after the shooting, the police executed a search warrant at a residence on Emden Street. R. 87. AJ lived at Emden Street. R. 88. The police collected two assault rifles. R. 93. Multiple guns were also found on the scene. R. 94.

The police collected surveillance video from a house on the end of the street. R. 105. Excerpts from the video were played as State's Exhibit 160. R. 112. The officer testified that the video showed a car arriving shortly after the shooting and two men getting out of the car and walking into the house. R. 112-113. The police gathered evidence surveillance video from another house down the street from the shooting incident. R. 144. (State's Ex. 3). The video shows a car

driving around the area about twenty minutes prior to the shooting. R. 146. The officer said it was the same car shown on an earlier video, but as pointed out by defense counsel on cross-examination, no license plate was visible on the video. R. 147.

Jessica Freeman was at her house on Emden Street when she heard gunshots. R. 149. She considered AJ to be her nephew. R. 149. After the gunshots, AJ was dropped off at her house. R. 149. Antoine was with Pierre Nelson. R. 150. She claimed appellant was driving the car. R. 150. Freeman said, "I don't know him personally, but I know of him." R. 150. Cross-Examination revealed that it was dark and that Freeman was standing approximately 25 to 30 yards from the car. R. 154-156. The driver never got out of the car. R. 155.

On April 21st, 2020, Officer Michael Cook was on patrol. R. 165. He heard on the radio that a brown, four-door Ford Focus needed to be stopped. R. 166. Officer Cook pulled the car. R. 166. The car was blue, not brown. R. 167. Appellant was the driver and he was taken to the police station. R. 167-168. Appellant was very cooperative and made no attempt to flee. R. 169. A police officer who assisted in trying to locate the car seen at the shooting incident location testified that thousands of Ford Focuses were in the Charleston area. R. 179-180.

Jamaul Simmons, who had multiple pending charges with the solicitor's office, testified that he and the decedent had been friends for ten years. R 261-263. Simmons and the decedent were walking back to the decedent's house when Simmons noticed a car acting strangely. R. 263-266. Someone got out of the car began shooting. R. 267. Someone shouted, "Give me everything." R. 267. Simmons thought he heard two guns. R. 269. Simmons did not see who did the shooting because their faces were covered. R. 270.

Simmons said that earlier that day, AJ called and claimed the decedent had robbed him. R. 271-272. He wanted to know if Simmons could get his money back from the decedent. R. 271-

272. Simmons admitted that he knew AJ and Pierre Nelson, but he did not know appellant. R. 271, R. 276. After the car left, Simmons went to check on the decedent and noticed that it looked like someone had been in his pockets. R. 273-274.

Despite being in the car when the shooting occurred, the state never charged Pierre Nelson with a crime. R. 280. R. 293-294. Nelson testified pursuant to a proffer agreement that protected him from being charged if he told the truth. R. 280. Nelson and AJ were friends since the first grade. R. 281-282. Nelson did not know appellant. R. 282.

On the day of the shooting, Nelson went to AJ's house to get his book bag. R. 282. AJ told him earlier in the day that he had been robbed. R. 284-285. AJ said it was one of his old friends that had robbed him. R. 285. Nelson claimed not to know the decedent. R. 285. A car came up to AJ's house and, after some prompting from the solicitor, Nelson said appellant was in the car. R. 285-288.

Nelson and AJ sat in the backseat. R. 290. Another person besides appellant was in the front of the car. R. 290. Nelson claimed that he did not know who that person was. R. 290. While they were riding, someone pointed to two people and said "That's them boys right there." R. 293. The car backed into a driveway. R. 294. Two men got out of the car and Nelson immediately heard gunshots. R. 294-296.

Despite being in the car for a significant period of time, Nelson claimed not to see anyone jump out with a gun. R. 294-296. Nelson did say that he saw a long-barreled military style weapon in the front seat at some point inside the car. R. 300. Nelson claimed he did not know of any plan to shoot anyone when he got into the car. R. 297. After the shooting, they went back to AJ's house. R. 298.

Nelson identified appellant as being in the car after the police handed him a single sheet of paper with just appellant's picture on it. R. 309. The police had already told Nelson they had talked to appellant. R. 309. The police gave Nelson appellant's name. R. 310-311. On redirect, Nelson claimed appellant had been the driver. R. 318.

The lead investigator said he could determine no motive for appellant to shoot and kill the decedent. R. 509-510. The investigator also said that he was able to determine whether the decedent had robbed AJ in the hours before the shooting. R. 509.

Near the end of the State's case, but before the close of the evidence, Judge Jefferson informed the parties that she needed to deal with a jury note. R. 557. R. 747. The jury's note read as follows:

> 1. What weapon was associated with the projectile found in Mr. Jimenez' trailer/head injury?
> 2. To be clear, was a 40 caliber pistol ever recovered (that was used at the scene)?
> 3. At the Emden House, did they interview anyone else from that night to identify the driver?

R. 747. After reading the note, the judge said,

> My response to them would be as follows, and I will do that **before** we proceed with the testimony this morning. Would be as follows: ladies and gentlemen of the jury, **all of the evidence in this case has been presented to you.** The court cannot answer factual questions period you must only consider the testimony and evidence that has been submitted into the record for the purposes of your deliberations. You cannot conduct your own independent investigation or fact finding outside of the evidence and testimony presented to you during the course of this trial. You're not to speculate or draw any inferences or conclusions from this response to your inquiry during your deliberation. And I think I may, also, add and emphasize that the note would indicate **that there's the potential for premature deliberation** regarding the facts and circumstances of this case and I would remind them that that is strictly prohibited.

R. 557-558 (emphasis added). The solicitor pointed out that the State had not yet rested and the jury had not yet heard all of the evidence. R. 558. The court responded, "They've heard all the evidence up to this point." R. 558.

After indicating other language the court might charge, appellant moved for a mistrial. R. 559. "I think that they're already starting deliberations. I don't feel that's proper. I don't feel them even asking questions at this point in time in the case is proper." R. 559. The court responded by remarking that jurors watch too many TV shows, some from Texas, where jurors are allowed to ask factual questions during the courts of the trial. R. 559-560. The court then indicated she was not sure who was asking the question and that the note was signed by the foreperson. R. 560. The court indicated that she need only give a curative instruction and the remedy was not a mistrial. R. 560.

Appellant objected to the giving of any curative instruction and again asked for a mistrial because of premature deliberations. R. 560. The court then denied the motion and stated "there's no evidence in the record to indicate that they are prematurely deliberating. But even if they had, the remedy would still be a curative instruction." R. 561. The State then sought permission to recall a witness to answer the jury's questions, but after a long discussion, the witness was not permitted to testify. R. 561. R. 569-581.

Judge Jefferson recalled the jury to the courtroom. R. 562. After reading the note, the court stated:

> In response to that question, ladies and gentlemen, I advise you as follows: Under our rules in the State of South Carolina, juries cannot ask actual questions regarding the facts and circumstances of the case. By your oath, you are required to decide this case only according to the testimony that is presented from the lips of the sworn witnesses and the other evidence that may be introduced. Under our rules of evidence and procedure, there is a way that attorneys try a case and that is based on those rules of evidence and procedure.

> So I would instruct you further that you have at this point heard the evidence in this case. The court cannot answer factual questions. You must only consider the testimony and evidence that has been submitted into the record for purposes of your deliberations. You are prohibited and cannot conduct your own independent investigation or fact finding outside the evidence and testimony presented to you during the course of this trial. And, of course, you are not to speculate or draw any inference or conclusion from the Court's response to your inquiry during your deliberative process.
>
> I would, also, sternly admonish and remind you that this note **could imply that there has been premature deliberation** or discussion regarding the facts and circumstances of this case. And by your oath, you're to have on [sic] discussion about the facts and circumstances of this case until you have heard all of the evidence, you've heard the arguments of the parties and the Court has instructed you on the law and released you to begin your deliberations.

R. 563-564 (emphasis added). The State then entered jail calls as evidence and made its attempt to recall a witness to answer the jury's questions. R. 565-581. The State then rested in front of the jury. R. 583.

Legal Discussion

Not only did the trial court err in not declaring a mistrial, it prematurely declared that the only remedy was a curative instruction and did not follow the procedure regarding how to deal with premature deliberations. State v. Aldret, 333 S.C. 307, 312, 509 S.E.2d 811, 813 (1999). In Aldret, the court stated that if a judge learns of premature deliberations, it should "conduct a hearing to ascertain if, in fact, such premature deliberations occurred, and if the deliberations were prejudicial." Id. If requested, "the court may voir dire the jurors, and if practicable, 'tailor a cautionary instruction to correct the ascertained damage.'" Id. However, "[i]f the trial court determines the deliberations were prejudicial, such findings should be set forth on the record, and a new trial ordered." Id.

Premature deliberations are highly improper. "[A] jury should not begin discussing a case, nor deciding the issues, until all of the evidence, the argument of counsel, and the charge of the law is completed." State v. McGuire, 272 S.C. 547, 551, 253 S.E.2d 103, 105 (1979). According to the

Court, "[t]he reason for the rule [was] apparent." Id. at 552, 253 S.E.2d at 105. "The human mind is constituted such that when a juror declares himself, touching any controversy, he is apt to stand by his utterances to the other jurors in defiance of evidence. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation." Id. See also State v. Joyner, 289 S.C. 436, 437-438, 346 S.E.2d 711, 712 (1986) (holding a judge's instruction to not make up their minds, but allowing the jurors to talk about the case prior to completion was reversible error and that discussing the case was "tantamount to deliberations"); State v. Pierce, 289 S.C. 430, 433, 346 S.E.2d 707, 710 (1986) (same); State v. Gill, 273 S.C. 190, 192, 255 S.E.2d 455, 456-457 (1979) (same); Gallman v. State, 307 S.C. 273, 277, 414 S.E.2d 780, 782 (1992) (granting post-conviction relief where trial counsel failed to object to instructions that permitted the jurors to talk about the case prior to the completion of the trial).

The trial court here contradicted itself by first ruling there was no evidence of premature deliberations and then telling the jury that their questions implied that deliberations had occurred. The court conducted no inquiry because it ruled that the only remedy was a curative instruction, ignoring Aldret and the precedent reversing because of prejudicial premature deliberations. This case is most like State v. Gill, 273 S.C. 190, 192, 255 S.E.2d 455, 457 (1979). In Gill, the judge gave an instruction during the trial telling jurors that they should only deliberate in the jury room, but not to discuss it in other places. Id. The Supreme Court reversed even though no inquiry into prejudice was conducted. Id.

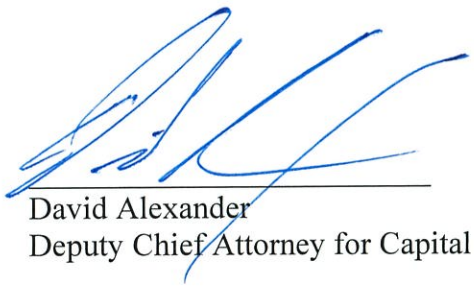
Here, the jurors' note shows that premature deliberations occurred. Without any inquiry into prejudice as in Aldret because of the Court's belief that only a curative was required, this case resembles Gill and should be reversed. The judge in Gill invited the jurors to improperly deliberate.

The trial court here knew that premature deliberations were likely occurring and conducted no investigation. Therefore, like in Gill, this Court should reverse.

In the event this Court elects not to reverse on this record, then the proper remedy would be a remand for a hearing pursuant to Aldret. See Ethier v. Fairfield Mem. Hosp., 429 S.C. 649, 842 S.E.2d 355 (2020). In Ethier, the plaintiffs learned of juror misconduct after the trial. The trial judge held a hearing to determine prejudice. The Court ultimately found the premature deliberations and a juror's relationship with a witness were prejudicial and reversed. Id. Reversal here should occur because of the inherently prejudicial effect like in Gill, but at a minimum, a remand to discover the extent of the deliberations is necessary to protect appellant's right to fundamental fairness.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand for a new trial. Alternatively, this Court should remand the case for a hearing to determine the prejudicial effect of the premature deliberations.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 24th day of February, 2025.

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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."

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This 24th day of February, 2025.

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Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

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ALONZA D. MARABLE,

APPELLANT

APPELLATE CASE NO. 2023-000988

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 Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24th day of February, 2025.

David Alexander
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From: Stock, Chris
To: SC - BROWN MELODY; Angela Brown
Cc: Alexander, David
Subject: 2023-000988 - State v. Marable - Final Brief of Appellant
Date: Monday, February 24, 2025 3:32:00 PM
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Ms. Brown,

Please find attached for service the Final Brief of Appellant for Alonza Marable's appeal which will be filed today with the Court of Appeals.

Thank you.
Chris

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