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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
The Honorable J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2023-001273

THE STATE, Respondent,

v.

FRANK L. MILLS, JR., Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia St
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

On July 12, 2021, a Spartanburg County Grand Jury indicted Appellant Frank Mills, Jr. for armed robbery, possession of a weapon during the commission of a violent crime, and three counts of kidnapping. On July 31-August 2, 2023, Appellant proceeded to trial before the Honorable J. Mark Hayes, II. The jury found Appellant guilty as indicted. Pursuant to S.C. Code Ann. 17-25-45, the trial court sentenced Appellant to concurrent terms of life imprisonment with without the possibility of parole (LWOP) for armed robbery and the three counts of kidnapping. The LWOP notice was timely served. The Court did not impose a sentence for possession of a weapon during the commission of a violent crime. This appeal follows.

STATEMENT OF FACTS

On September 2, 2019, Crystal Cooper, Rachel Loan[1], and Rita Vaughan were working at the Holiday Inn Express in Spartanburg County. A man came into the hotel and backed Loan and Cooper against a wall and demanded money. (R. 92-93). Loan testified that she had been calling Vaughan's name and Vaughan then came out of her office door and saw the man. (R. 93). Vaughan handed over the cashbox and what was in the safe. (R. 66). The man then forced all three to sit by the wall until he was out of the building. (R. 69). Vaughan called 911 immediately after the man left. (R. 69).

The employees did not recognize the robber, and he did not touch anything other than the items he took. Video surveillance equipment captured the robbery on film, although the robber's face was obscured by a baseball cap pulled low and his hand holding a knife near his face. The robber was a black man wearing a striped shirt. His baseball cap was black with a small white logo or design just above the bill. (R. 123; State's Exhibit 1).

A few days after the robbery, a guest at the hotel approached Loan and showed her a picture from a news article about a bank robbery in Union, in which the robber wielded a knife, and which had recently been solved with an arrest. (R. 99). The news article was dated September 11, 2019, included a photograph of Frank Mills, Jr. (Appellant). The photograph was State's Exhibit 13, and the news article was Court's Exhibit 2. Loan testified that she knew it was the man who robbed her as soon as she saw the photo. (R. 99).

Vaughan called Investigator John Guest with the Spartanburg County Sheriff's office to tell him that she believed the man in the article was the man that robbed them. (R. 75). Guest was able to name Frank Mills, Jr. as the man in the photo and a person of interest in the current case.

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[1] Most of the transcript shows her name being Rachel Loan, but in her testimony she states her name is Rachel Long. For purposes of this brief, we will be referred to as Loan.

(R. 126). Guest then compared Appellant's photo with the surveillance video in the hotel. (R. 126-127). Guest arranged a meeting with Appellant's wife, Joyce Rice, where he showed her the surveillance footage. (R. 128, 212). Rice testified that she had no doubt it was her husband in the video. (R. 213). Rice testified that Appellant was gone from 9:00am the morning of the crime until 1:30pm when he returned home and gave her $300. (R. 215-216). Rice allowed law enforcement to search their home and officers collected a black hat with a Russell athletic logo matching the one seen in the surveillance video. (R. 130).

STANDARD OF REVIEW

Issue 1

"The decision to grant or deny a motion for a mistrial is a matter within a trial court's discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). Whether a mistrial is necessary is decided on a case by case basis. "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 judge." State v. Rowlands, 343 S.C. 454, 457-458, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 445, 460 (Ct. App. 2005). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

Issue 2

"A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." State v. Howard, 396 S.C. 173, 177, 720 S.E.2d 511, 514 (Ct. App. 2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "To warrant the reversal based on

the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005).

ARGUMENT

1. The trial court properly denied Appellant's motion for a mistrial.

During trial the State presented Andrew Abercrombie, Appellant's former roommate from prison, and Investigator Brian Dill as witnesses. Dill had shown Abercrombie the video footage from the robbery and Dill testified that Abercrombie identified Appellant as the robber. (R. 207). Abercrombie made it clear to the Court that he did not want to testify and so Abercrombie's testimony was first proffered. (R. 176-179). The trial judge instructed Abercrombie outside of the presence of the jury that it was fine to establish that they were roommates, but not to go into the fact that they were in prison together. (R. 180).

During direct examination the following conversation took place:

Q: All right. Do you know Frank Mills?

A: Yes, I do.

Q: How long have you known Frank Mills?

A: The 80's

Q: All right. And at times since then, have you all lived together?

A: Not on the street, no. Not on the street, no.

Q: Okay. What about at Jump Start?

A: Yeah, Jump Start we had, yeah

Q: All right.

Ms. White: Objection, Your honor.

The Witness: It's a prison program.

Ms. White: Objection, Your honor.

(R. 184). The direct examination continued after the trial judge stated he would hear arguments regarding the objection later. (R. 184). Abercrombie proceeded to testify that he did not recall identifying the robber on the footage as Appellant. (R. 187).

After the conclusion of the testimony outside the presence of the jury, trial counsel made a motion for a mistrial stating:

> Jump Start is a reentry program that works with offenders that have been in prison to kind of get them back together and back into the real world to, to be able to enter life. Your, Honor, based on that, and the fact that I believe that introduces essentially information that Mr. Mills has been in prison. I'm not sure of who may or may not on that jury be aware of the Jump Start program because they do have a lot of social media and some media programs. But we believe that at this point that would prejudice him to the point that we would need to ask for a mistrial.

(R. 189-190). The Solicitor responded that the State was not trying to elicit that information and requested a less harsh remedy than a mistrial. (R. 190). Trial counsel stated that if the Court was not willing to grant a mistrial that they did not want a curative instruction because they did not feel it would be beneficial. (R. 190-191). The trial judge denied the motion for a mistrial stating that it was a brief mention of the program and while it was a prison program there was no mention as to how they were at the program together and could have been instructors or one of them in transition etc. (R. 192). Appellant now argues that the trial court erred by refusing to grant a mistrial when a State's witness testified he knew Appellant because they had lived together at "Jump Start" which was a prison program. Appellant argues this information was highly prejudicial and could only be remedied by a mistrial.

"The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "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, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010). "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, 447-448, 639 S.E.2d 160, 164 (Ct. App. 2006). "The granting of a motion for mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Harris, 382 S.C. at 117, 674 S.E.2d at 537.

Appellant argues that a mistrial should have been granted due to the mention of Appellant being at Jump Start because it introduced to the jury that he had been in prison; however, the vague mention of a prison program would not rise to the level of a mistrial. In State v. Thompson, this court held that a police officer's single reference to warrants that existed against the defendant did not constitute sufficient prejudice to justify a mistrial. State v. Thompson, 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003). "[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes." Thompson at 561, 575 S.E.2d at 82; See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (determining law enforcement agent's isolated testimony that he compared defendant's fingerprints with fingerprint card agency had on record was not so prejudicial to defendant as to warrant mistrial because it was questionable whether the jury drew a connection between a fingerprint card and defendant's prior criminal activity). Further in State v. Robinson[2] the court emphasized that even if the testimony created the inference in the jury's mind that the accused had committed another crime, the state never attempted to prove the accused had been convicted of some other crime.

[2] State v. Robinson, 238 S.C. 140, 119 S.E.2d 671 (1961)

In this case, the State did not even reference any other criminal activity. The State was simply trying to elicit that Abercrombie knew Appellant well because they had been roommates. (R. 184). Abercrombie was being difficult when asked if he and Appellant had lived together and stated that they had not lived together on the street. (R. 184). The State then asked "What about at Jump Start?" (R. 184). It was Abercrombie who then offered up additional information by saying that yes they had lived together there and that was a prison program. (R. 184). The State then moved on and did not go deeper into what type of prison program or how they were there together. (R. 184-185).

Further, when the trial judge offered to give a curative instruction, Appellant did not think it would be beneficial and asked that a curative instruction not be given. "Generally, a curative instruction is deemed to have cured any alleged error." State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006). "As the law assumes a curative instruction will remedy an error, failure to accept such a charge when offered, or failure to object to the sufficiency of that charge, renders the issue waived and unpreserved for appellate review." State v. Smith, 411 S.C. 161, 169, 767 S.E.2d 212, 216 (Ct. App. 2014). This vague reference of a prison program is not sufficient to justify a mistrial and therefore the trial judge did not err in denying the motion for a mistrial.

2. The Court did not err in admitting mug shots of Appellant when the State had a demonstrable need for the photograph, and the photograph did not indicate Appellant had a criminal record.

State's Exhibit 13 is a picture of Appellant that was included in the article that was shown to Loan by the hotel guest. During the direct examination of Loan, State's Exhibit 13 was entered and shown to Loan, and she testified that was the photo that the hotel guest showed her, and she knew immediately that the man in the photo was the man who robbed her. (R. 99). During the

direct examination of John Guest, State's Exhibits 7-9 were entered and shown to Guest where he testified that they appeared to be the booking photos of when Appellant was booked. (R. 138). He further testified that there was one without glasses and that it appeared to show the acne or scarring on the side of his face. (R. 139). Trial counsel made an objection prior to the admission of the photos in a bench conference that was then placed on the record after the complete examination of the witness. (R. 137). Trial counsel objected pursuant to Rule 403, SCRE, stating the unfair prejudice by the mugshots, and given that the jurors already had the media photograph of Appellant from which Loan and Vaughan identified him from. (R. 159). The State argued that it was different angles and that photographs 7-9 were of a higher resolution. Further, it was not prejudicial just because it was a mugshot because the jury was aware that he was arrested for this crime. (R. 160). The court overruled the objection stating that the issue of identity was for the jury. (R. 160). Further, the court stated the images did not present any type of negative emotional reaction since the photographs were not obviously mugshots. (R. 160).

Appellant argues the court erred in admitting mugshots of Appellant, where the cumulative photographs should have been excluded pursuant to Rule 403, SCRE, since their probative value was substantially outweighed by the danger of unfair prejudice. Specifically, Appellant argues that the admission of the mugshots is reversible error because the State did not have a demonstrable need to introduce the photographs and because they were introduced as "booking" photos it told the jury that Appellant had been jailed and drew attention to the photographs' origin. This argument lacks merit because the State produced a reason for introducing the photographs and the photographs did not suggest that Appellant had a prior record.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403 SCRE. "The introduction of a 'mug-shot' of a defendant is reversible error unless: (1) the [S]tate 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).

Here, all prerequisites prescribed by the South Carolina Supreme Court for the admission of a mug shot in State v. Traylor were met. First and foremost, there was a demonstrable need for Appellant's photograph to be admitted into evidence. There was testimony by Vaughan that Appellant's skin wasn't smooth and had acne scars. State's Exhibits 7-9 were much higher resolution than State's Exhibit 13. Further State's Exhibit 8 is a different angle of Appellant's face and State's Exhibit 9 is him without his glasses on.

Second, the photograph shown to the jury did not suggest Appellant had a criminal record. State's Exhibit 7 and 9 are straightforward view of Appellant's face and neck. While State's Exhibit 8 is a side profile of Appellant, none of the photographs have any indication that it is a booking photo such as a placard around Appellant's neck or Appellant dressed in a prison uniform. In State v. Ford, this Court held that a series of similar mug shots were proper where "Only the heads and necks of the individuals in the lineup photographs were visible in the photo lineup. The remainder of each photograph was cut away. No identifying clothing or placards were visible in the lineup." State v. Ford, 334 S.C. 444, 450 n. 3, 513 S.E.2d 385, 388 n. 3 (Ct. App. 1999). Appellant argues that because Guest testified that these were "booking photos" that it was prejudicial; however, even his mention that these were in fact booking photos does not

indicate to the jury that he has a previous criminal record. The introduction of those photos followed Guest's testimony of how Appellant came to be his suspect in this case and the investigation into Appellant indicating to the jury that these booking photos were taken for the crime he was on trial for following the completed investigation by Guest. (R. 111-158). Finally, the photographs were not introduced in such a way to draw attention to its origin or implication. While Guest did reference the photos being "booking" photos, the photos were introduced for Guest to testify to the acne or scarring on Appellant's face in the photos. (R. 138-139). Therefore, the trial judge did not err in admitting Appellant's mug shots and Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia St.
Spartanburg, SC 29306

BY: _____
Ambree M. Muller
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Joanna K. Delany, Esquire, counsel of record for the Appellant by electronic mail to the addresses listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 20th day of February, 2025.

Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3835

Grace Sommer

From: Grace Sommer
Sent: Thursday, February 20, 2025 2:19 PM
To: Delany, Joanna
Cc: Ambree Muller; Mcinnis, Sara
Subject: The State v. Frank L. Mills, Jr. (2023-001273)
Attachments: MILLS Frank - FBOR.pdf

Good Afternoon Ms. Delany,

Attached please find the Final Brief of Respondent in The State v. Frank L. Mills, Jr. (2023-001273). This Brief will be filed today with the Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

Grace Sommer, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov