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Apr 15 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAELON JASPER BROWN,

APPELLANT.

APPELLATE CASE NO. 2024-001099

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by refusing to grant a mistrial where, due to the cumulative problems with various members of the jury, the jury as a whole could not be fair and impartial?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant on August 18, 2020, for murder, possession of a weapon during the commission of a violent crime, and conspiracy, and on May 7, 2024, for attempted armed robbery. R. 751-756. His case was called to trial on June 17, 2024, before the Honorable Perry H. Gravely, and a jury. Appellant was tried jointly with his codefendants, Jaylin Hill and David Mosley. Assistant Solicitors William Douglas, Jr. and Britni McCall represented the state. David Cantrell, Jr. represented Appellant. Kraig Pringle represented Hill. Richard Warder represented Mosley. R. 1.

At the conclusion of the state's presentation of evidence, the assistant solicitor chose to dismiss the weapons offense. R. 598, l. 21 – 599, l. 10.

On June 21, 2024, the jury found Appellant guilty as indicted.¹ R. 728, ll. 6-12. He was sentenced to fifty years for murder, twenty years for attempted armed robbery, and five years for conspiracy. All sentences were ordered to be served consecutively with an aggregate sentence of seventy-five years. R. 749, ll. 16-20.

This appeal follows.

¹ Hill and Mosley were indicted and tried for the same offenses as Appellant. The jury acquitted Hill and Mosley of murder, but found them guilty of attempted armed robbery and conspiracy. R. 728, l. 13 – 729, l. 1.

STATEMENT OF FACTS

On the night of December 19, 2019, fifteen year old Kerolos Zaky, the decedent, picked up his friend, Thomas Mueller, from Mueller's house. Zaky then picked up Nijah Croskey, another friend, from Croskey's house. Zaky, Mueller, and Croskey went to McDonald's to use the restaurant's Wi-Fi. While at McDonald's, Croskey contacted some of his friends on Snapchat or Instagram about hanging out. Zaky eventually picked up Appellant, Jaylin Hill, David Mosley, Jamazzeo Glover, and Tyreke McMahand.² Zaky and Mueller had never met Appellant, Hill, Mosley, Glover, or McMahand. R. 419, l. 15 – 422, l. 16; R. 445, l. 2 – 447, l. 19.

Zaky drove the group of eight to a Spinx convenience store where they hung out for just over thirty minutes. R. 487, ll. 16-19. According to Glover, while the group was at the Spinx, Hill asked Zaky if Zaky had change for a twenty dollar bill. Zaky allegedly said all he had was a hundred dollars. This is when Hill devised a plan to rob Zaky. Glover claimed Hill typed a message in Snapchat on his phone and showed the text to Appellant, Glover, Mosley, and McMahand without actually sending the message. The message read, "Do y'all want to rob him or not?" Despite the fact that the eight teenagers were crammed into a small car, Glover maintained that Zaky, Mueller, and Croskey did not see Hill's message. R. 338, l. 9 – 341, l. 24.

Hill then suggested Zaky drive the group to the Kingswood neighborhood in Piedmont where he knew "some girls." On the way to Kingswood, Hill typed another message on Snapchat again without actually sending it. This message read, "Are we going to do this or not?" According to Glover, Hill showed the message to Appellant and Mosley. Glover claimed Appellant nodded his head in agreement. R. 344, l. 8 – 345, l. 23.

² In December 2019, Jamazzeo Glover and Appellant were eighteen years old, Thomas Mueller was seventeen years old, Nijah Croskey, David Mosley, and Jaylin Hill were fifteen years old, and Tyreke McMahand was fourteen years old. McMahand was adjudicated in Family Court.

Zaky parked his car in front of an abandoned house in Kingswood. Once he parked, everyone got out of the car. Appellant asked Zaky to “pop the trunk” so Appellant could retrieve his book bag. According to Glover, as Zaky was unlocking the trunk, Appellant “pistol-whipped him in the head.” Hill, Mosley, McMahan, and Appellant then allegedly began beating Zaky with their hands. They attempted to rob him, but Zaky did not have anything on his person. Eventually Zaky was able to get back into the driver’s seat of his car. As he was slowly driving away, Glover claimed Mosley told Appellant to “blast that N word.” Appellant then fired five or six shots into the car. Glover maintained that he “took off running” after the first shot. R. 346, l. 2 – 352, l. 20.

Mueller and Croskey did not see the shooting. They both fled as soon as Zaky was struck in the back of the head with the pistol. R. 424, l. 18 – 426, l. 23; R. 449, l. 6 – 452, l. 7. Mueller identified Glover as the person who initially struck Zaky with the gun. R. 432, l. 5 – 433, l. 21.

STANDARD OF REVIEW

“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). “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. at 585-886, 698 S.E.2d at 865 (citing Harris, 382 S.C. at 117, 674 S.E.2d at 537).

ARGUMENT

The trial court erred by refusing to grant a mistrial where, due to the cumulative problems with various members of the jury, the jury as a whole could not be fair and impartial.

Relevant Facts

Before *voir dire* and jury selection, the parties were informed that a prospective juror assaulted another prospective juror and a third prospective juror witnessed the assault. The assault happened downstairs before the jury panel was brought into the courtroom. The trial court stated the altercation “had nothing to do with anything with this case.” Because of the alleged assault, “an entirely new panel” was drawn at “random” without the three jurors who were involved in or witnessed the altercation. R. 37, ll. 14-21.

When questioned, counsel for Appellant stated he had no objection with how the court “handled” the situation. However, counsel for Mosley inquired whether any of the other potential jurors learned about the assault. When the court stated it was its “understanding there was no discussion with any other jurors” about the altercation, counsel for Mosley stated he had no objection. However, counsel for Hill objected to selecting jurors from the current panel of jurors. He argued that “out of an abundance of caution” a completely new panel of jurors was necessary to ensure the defendants received a fair trial. Counsel for Hill asserted, “I don’t think that any juror that knew or heard or heard rumor about it could feel the same about trying a criminal case after one of them had a criminal case act against them in the very confines of the jury selection room. I think it would taint those jurors’ outlook on criminal behavior, and I think it would make a conviction in this criminal trial, even though it has nothing to do with it, more likely.” R. 37, l. 22 – 39, l. 22. Counsel for Mosely joined in counsel for Hill’s argument stating

his lack of objection was “based on the assumption that there hasn’t been any contamination or tainting.” R. 40, ll. 1-5.

The trial court denied the motion to select a jury from an entirely new panel of prospective jurors. The court found no prejudice to any of the defendants and stated, “a whole new panel has been drawn as far as the ones that will be used for this case.” R. 40, ll. 6-24.

Later, after jury selection, opening statements, and the first witness, more problems with the jury arose. First, the assistant solicitor asserted a juror “was sleeping throughout a good bit” of the first witness’s testimony. The court stated it had been “watching” the juror “very carefully, and he was with us.” R. 145, ll. 8-16. Then, the court informed the parties that Juror No. 84, one of the two alternates, had an “outburst” in the jury room after jury selection the previous day. A fellow juror reported to the bailiff that there was a “possibility” Juror No. 84 “could not be impartial.” The court spoke to the unidentified juror who stated Juror No. 84 “said I can’t do this, there’s no way, I’ve got to get off this jury.” Consequently, the court spoke to Juror No. 84. Juror No. 84 “indicated that it was all related to work, that he was stressed out, that they had just gone through some type of merger or some project at work that he was over. But in talking with his job, they said they could handle it. And he said he could go forward, and he did not have a problem.” The court added that Juror No. 84 “said he could still be fair and impartial.” Based on this assertion, the court found there was “no reason to take him off” the jury. R. 168, l. 5 – 169, l. 11.

Additionally, the trial court informed the parties that it had to excuse Juror No. 174, who “indicated she was not comfortable going forward. She could not be fair and that she felt this was bringing back some issues that she had had personally.” Before the court excused Juror No.

174, it confirmed “she had not had any discussions with anybody else on the jury.” The court stated an alternate would have to be selected to replace Juror No. 174. R. 169, l. 23 – 170, l. 15.

Counsel for Appellant moved for a mistrial “given the totality of the circumstances of such unique and unexpected issues with jurors, a number of them, and given the fact that we are never sure whether there has been in the jury room communication, whether it’s verbal or otherwise about jury service, about this case, and there’s just no way of knowing.” Counsel argued “the only solution fair to the defendants” would be to grant a mistrial because there was no way a fair and impartial jury could be “seated to hear this case.” R. 170, l. 22 – 171, l. 10.

Counsel for Mosley joined in the motion for a mistrial. He argued the jury was “tainted” and problems with the jury had “cast” a “shadow over the entire proceedings.” Accordingly, he maintained that “the only fair remedy” to the defendants was to grant a mistrial. R. 171, l. 11 – 172, l. 6.

Counsel for Hill also joined in the motion for a mistrial. He expressed concern regarding Juror No. 84, who was originally unwilling to serve because of “pressure from work.” Counsel argued those “pressures from work” were still present despite the juror’s willingness to now serve on the jury. He maintained the stress from the juror’s job may later affect the juror again before the trial concluded. Consequently, counsel for Hill asserted the defendants could not receive “a fair trial with the way [the jury is] set up now.” R. 172, l. 9 – 173, l. 3.

The trial court denied the motion for a mistrial. The court reasoned that there was no indication that any juror could not be fair and impartial. Regarding Juror. No 84, who was selected as an alternate, the court emphasized that he said he could be fair and impartial and had “no problem going forward” after talking with his employer. As to Juror No. 174, the court found nothing she did before she was excused tainted the jury since she stated “there had been no

discussions with anyone else” on the jury. As to the alleged altercation before jury selection, the court emphasized that the matter was isolated to the three prospective jurors who were removed from the panel and “no other jurors were involved.” R. 173, ll. 4-25.

Juror No. 142, originally an alternate, was randomly selected to replace Juror No. 174, who was excused. R. 174, ll. 6-23. Juror No. 84 remained an alternate throughout the trial.

Counsel for Appellant renewed his motion for a mistrial on the morning of the third day of trial after a juror was tardy. Counsel for Mosley argued the tardiness of the juror was another distraction that could impact the fairness of the trial. He contended, given the “cumulative aspect” of the problems with the jury, a mistrial was warranted. R. 321, l. 8 – 322, l. 22.

The trial court again denied the motion for a mistrial. The court explained that a juror did not show up for court that morning. After several attempts, contact was made with the juror. The juror had apparently overslept, but appeared in court about thirty minutes later. The court found there was no evidence the jury could not be fair and impartial and there was no prejudice to the defendants. R. 321, l. 12 – 323, l. 4.

Discussion

The trial court erred by refusing to grant a mistrial where, due to the cumulative problems with various members of the jury, the jury as a whole could not be fair and impartial. There is a reasonable probability the problems with the jury affected the verdict. Consequently, Appellant should be granted a new trial.

The problems with the jury started before *voir dire* even began when a physical altercation occurred between two prospective jurors, which was witnessed by a third prospective juror. While these three jurors were excluded from the panel in which Appellant’s jury was selected, it is possible the act of violence tainted the entire jury panel.

After the jury was selected, the problems continued. First, the assistant solicitor asserted a juror “was sleeping throughout a good bit” of the first witness’s testimony. The court stated it had been “watching” the juror “very carefully, and he was with us.” R. 145, ll. 8-16.

Then, Juror No. 84, one of the two alternates, had an “outburst” in the jury room. A fellow juror reported to the bailiff that there was a “possibility” Juror No. 84 “could not be impartial.” The court spoke to the unidentified juror who stated Juror No. 84 “said I can’t do this, there’s no way, I’ve got to get off this jury.” When the court subsequently spoke to Juror No. 84, the juror stated his concerns were “all related to work” and “he was stressed out.” However, once Juror No. 84 spoke to his employer, he was more relaxed and “said he could go forward, and he . . . could still be fair and impartial.” R. 168, l. 5 – 169, l. 11.

The court later had to excuse Juror No. 174, who “was not comfortable going forward” and “could not be fair” because of “some issues that she had had personally.” R. 169, l. 23 – 170, l. 15. After Juror No. 174 was excused and replaced with an alternate, an unidentified juror was tardy to court causing an additional distraction for the jury.

“In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences.” State v. Bantan, 387 S.C. 412, 422, 692 S.E.2d 201, 206 (Ct. App. 2010) (quoting State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999)) (internal quotation marks omitted). However, “unless the misconduct affects the jury’s impartiality, it is not such misconduct as will affect the verdict.” Id. (quoting Cooper, 334 S.C. at 551, 514 S.E.2d at 590) (internal quotation marks and alterations omitted). “The general test for evaluating alleged juror misconduct is whether or not there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence.” Id. (quoting State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005)) (internal quotation marks omitted).

“A defeated party is not entitled to a new trial for every act of misconduct by or affecting the jury, as such misconduct ... does not *ipso facto* justify the grant of a new trial; but in order that a new trial may be granted on such ground the misconduct of the jury must relate to a material matter in dispute and must be such as to indicate an influence of bias or prejudice in the minds of the jurors.” Id. at 387 S.C. at 422-23, 692 S.E.2d at 206 (quoting Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, 447, 682 S.E.2d 489, 493 (2009)); See C.J.S. New Trial § 54 (1998).

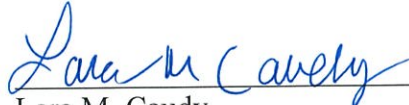
Appellant’s jury was not “free from all extraneous or improper influences.” There were numerous extraneous distractions that occurred during the course of Appellant’s trial that likely tainted the jury. First, it is impossible to know whether any of the individuals who served on Appellant’s jury heard about or witnessed the physical altercation that occurred before *voir dire*. If any jurors witnessed or heard about this violence, it is likely this outside influence would have made the jury more likely to convict. Additionally, the jurors all heard the “outburst” from Juror No. 84, who said he had to get off the jury. There is a reasonable probability this outburst tainted the rest of the jurors such that they could not be fair and impartial. Moreover, it is undisputed that a juror was sleeping during the testimony and did not hear important evidence presented in the case. Without having heard all the evidence, this juror could not render a fair and just verdict.

Respectfully, this Court should hold the trial court abused its discretion by denying Appellant’s motion for a mistrial due to the cumulative problems associated with the jury which prevented the jury from being fair and impartial.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in blue ink that reads "Lara M. Caudy". The signature is written in a cursive style and is positioned above a horizontal line.

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of April, 2025.

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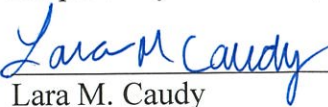
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Braelon Jasper Brown states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on June 17-21, 2024 before the Honorable Perry H. Gravely, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Braelon Jasper Brown.

Respectfully Submitted,



Lara M. Caudy

Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of April, 2025.

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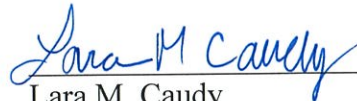
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Complete Trial Transcript Dated June 17-21, 2024;
- (2) Indictments;
- (3) Sentence Sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.



Lara M. Caudy
Senior Appellate Defender

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PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

This 15th day of April, 2025.


CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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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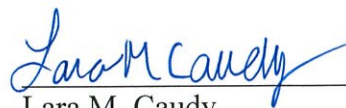
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case have been served upon Melody J. Brown, Esquire, at her primary email address listed in the Attorney Information System (AIS); and on Braelon Jasper Brown, #394117, at Evans Correctional Institution, 610 Highway 9 West, Bennettsville, SC 29512, this 15th day of April, 2025.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT