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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Robert J. Bonds, Circuit Court Judge
Appellate Case No. 2024-000432

THE STATE,

Respondent,

vs.

ANTWAN DEMETRIC McMILLAN,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF COLLETON)	CASE NUMBERS - ANTWAN MCMILLAN:
)	2010-GS-15-501, 502, 503, 504,
)	505, 506, 507
)	CASE NUMBERS - DAVID JAKES:
)	2010-GS-15-704, 705, 706, 703,
)	707, 708, 709
STATE OF SOUTH CAROLINA,)	
)	
)	
v.)	
)	
ANTWAN D. MCMILLAN AND)	
DAVID JAKES,)	<u>TRANSCRIPT OF RECORD</u>
)	
DEFENDANTS.)	
)	

August 29th - September 1st, 2011
Walterboro, South Carolina
BEFORE THE HONORABLE PERRY M. BUCKNER, III, Judge.

APPEARANCES:

Asst. Sol. Amanda Haselden, Esquire
Asst. Sol. Ben Shelton, Esquire
Fourteenth Circuit Solicitor's Office
Walterboro, South Carolina 29488
Attorneys for the State of South Carolina

Mr. David S. Mathews, Esquire
Attorney for the Defendant McMillan
Public Defender of Colleton County

Mr. Harris S. Beach, Esquire
Attorney for the Defendant Jakes
Public Defender of Colleton County
Walterboro, South Carolina 29488

Rebecca H. Hill
Official Court Reporter

1 **THE COURT:** Is the State ready to proceed?

2 **ASST. SOL. HASELDEN:** Yes, Your Honor.

3 **THE COURT:** Are the defendants ready to proceed?

4 **MR. MATHEWS:** Yes, Your Honor.

5 **MR. BEACH:** Yes, Your Honor.

6 **THE COURT:** Very well. All right. Solicitor, call
7 your case.

8 **ASST. SOL. HASELDEN:** Thank you, Your Honor. The State
9 is ready to proceed in State v. David Jakes in Indictment
10 2010-GS-15-0703 for attempted armed robbery; 0704 for
11 attempted murder; 0705 for attempted murder; 0706 for
12 attempted murder; 0707 for attempted armed robbery; 0708 for
13 attempted armed robbery; 0709 for possession of a weapon
14 during the commission of a violent crime; and 2011-GS-15-
15 00598 for possession of a stolen pistol.

16 The State is also ready to proceed in the State v.
17 Antwan D. McMillan. Indictment 2010-GS-15-00501 for
18 attempted murder; 00502 for attempted murder; 00503 for
19 attempted murder; 00504 for attempted armed robbery; 00505
20 for attempted armed robbery; 00506 for attempted armed
21 robbery; and 00507 for possession of a weapon during the
22 commission of a violent crime.

23 May I approach?

24 **THE COURT:** You may. So you're proceeding in eight
25 indictments against each of the two defendants?

1 **THE COURT:** Mr. Mathews?

2 **MR. MATHEWS:** Yes, Your Honor.

3 **THE COURT:** Mr. Beach?

4 **MR. BEACH:** Yes, sir.

5 **THE COURT:** Everyone also agrees that I can send a box
6 of rubber gloves back to the jury so that if they want to
7 handle any of the evidence they can wear gloves; any
8 objection from the State?

9 **ASST. SOL. HASELDEN:** No objection.

10 **THE COURT:** Mr. Mathews?

11 **MR. MATHEWS:** No, sir.

12 **THE COURT:** Mr. Beach?

13 **MR. BEACH:** No, sir.

14 **THE COURT:** Finally, everyone agrees to put all the
15 bullets that are with the guns, because the guns are
16 inoperable, according to my law enforcement personnel. They
17 have a lock which requires a key inside the weapon and it
18 cannot be fired even with the bullets going back to the
19 jury; is the State satisfied that it can go back?

20 **ASST. SOL. HASELDEN:** Yes, sir.

21 **THE COURT:** Mr. Mathews?

22 **MR. MATHEWS:** Yes, sir.

23 **THE COURT:** Mr. Beach?

24 **MR. BEACH:** Yes, sir.

25 **THE COURT:** Take them into the jury and tell them they

1 may commence their deliberation.

2 (1:00 P.M., 09-01-11, WHEREUPON, EXHIBITS AND VERDICT
3 FORM ARE TAKEN TO THE JURY AND THE COURT IS IN RECESS IN THE
4 TRIAL OF THIS CASE.)

5 (1:45 P.M., 09-01-11, NOTE IS RECEIVED FROM THE JURY.)

6 (COURT'S EXHIBIT NUMBER FOUR IS RECEIVED INTO
7 EVIDENCE.)

8 **THE COURT:** Mr. Beach, do you waive your client's
9 appearance for this?

10 **MR. BEACH:** I do, Your Honor.

11 **THE COURT:** Are you willing to waive your client's
12 appearance, for purposes of this jury question?

13 **MR. MATHEWS:** Yes, Your Honor.

14 **THE COURT:** All right. As I know they are eating
15 lunch. I've just received a note from the jury, which has
16 been marked by the court reporter as Court's Exhibit Number
17 Four. I've met with the attorneys in chambers. There are
18 two questions, and the questions are, are we allowed to have
19 a transcript of the proceedings for deliberation; Question
20 One, signed by the Foreperson, Dawn Allen. Question two is
21 from juror number 66, April Gadson, the third person that
22 was in the car, is he not supposed to be here if the law
23 states that the hand of one is the hand of all; and if one
24 is guilty, the other is?

25 The lawyers have agreed that the answers to the two

1 now answered each of the jury's questions concerning
2 testimony that you have requested in the trial of this case
3 to be replayed?

4 **JUROR:** Yes, sir.

5 **THE COURT:** I ask you, if you would please return to
6 your jury room and continue your deliberations.

7 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE
8 FOLLOWING IS HELD ON THE RECORD.)

9 **THE COURT:** Any exceptions or additions to the Court's
10 comments to the jury, from counsel for the State?

11 **ASST. SOL. HASELDEN:** None, Your Honor.

12 **THE COURT:** Counsel for the defendant McMillan?

13 **MR. MATHEWS:** No, sir.

14 **THE COURT:** From the defendant Jakes?

15 **MR. BEACH:** None, Your Honor.

16 **THE COURT:** Let the record reflect that I forgot to
17 mark, and I called counsel to the bench, the second note
18 from the jury that I received while I was explaining the
19 answer and the procedure that we were going give -- what was
20 marked as Court's Exhibit Number Five, the bailiff brought
21 me a second note which was a request in rehearing Detective
22 Johnson's testimony. Any objection to making that second
23 note, Court's Exhibit Six, from the State?

24 **ASST. SOL. HASELDEN:** None, Your Honor.

25 **THE COURT:** From the defendant McMillan?

1 **MR. MATHEWS:** No, sir.

2 **THE COURT:** From the defendant Jakes?

3 **MR. BEACH:** No, sir.

4 **THE COURT:** All right. We'll make that Court's Exhibit
5 Number Six, without objection. Mr. Mathews and Mr. Beach, I
6 need you to stay.

7 (COURT EXHIBIT SIX IS RECEIVED INTO EVIDENCE.)

8 I've got Ashley, so let's go back to work, while we're
9 waiting, let's get work done; doesn't look like I'm going
10 anywhere.

11 I'll take five minutes so we can get everybody up and
12 y'all can take a break.

13 (WHEREUPON, THE COURT IS IN RECESS FOR A BRIEF TIME.)

14 **THE COURT:** All right, on the record now. It is now
15 approximately five minutes to five. I took a break at
16 approximately 4:40, about fifteen minutes ago. As I ended
17 the break, we came out into the courtroom and about seven
18 minutes ago, I was approached by all of the lawyers in this
19 case, I was informed that a probation agent, here with the
20 Colleton County Probation and Parole, Mr. Nyle Eltzroth,
21 informed Ms. Haselden that he believed a juror on the jury
22 was actually on probation, this led to a review of the
23 jurors qualifications, the NCIC records that the solicitor
24 had in selecting the jury do not show that the juror has any
25 criminal records, at least the copy that the solicitor's

1 office has. However, the solicitor's office checked further
2 and Mr. Eltzroth has his records from probation and it is
3 learned that the juror has a habitual traffic offender
4 conviction for which he is on probation.

5 This information was important to counsel for Mr.
6 Mathews and Mr. McMillan, and for Mr. Jakes and Mr. Beach;
7 what is even stranger is Mr. Beach, who is a long time
8 officer of this court and who this Court has complete faith
9 in, represented this juror, does not recall it, and informed
10 the court of such, so the public defender was his lawyer.
11 While I'm being told this information, the bailiff walks
12 into my office, with all the lawyers present, and informs me
13 the jury has a verdict and that they are ready to publish
14 their verdict.

15 Counsel then agrees that they would waive any
16 disqualification of the juror for having a criminal record
17 in order to receive the verdict, since we have been trying
18 this case this entire week and they wanted to have
19 resolution of the case. I told the Solicitor that I would
20 give them time to speak to the victims. I told Counsel for
21 defendants I would give them time before any verdict was
22 published to speak to their clients and that there would be
23 a knowing waiver of this on the record with everybody
24 understanding exactly how it occurred.

25 This procedure of doing this is because the parties

1 won't publish the verdict, and defense counsel object at
2 this point to disqualifying the juror, even though if it is
3 true, he clearly would be disqualified for failing to
4 disclose that he has an offense carried more than one year
5 in prison as the habitual traffic offender carries five
6 years.

7 Despite that fact, the parties won't publish the
8 verdict even if there were a disqualifying offense because
9 they want an end to the matter and they've had the
10 opportunity to go over this with their respective clients.
11 Have I accurately stated the agreement insofar as the State
12 is concerned?

13 **ASST. SOL. HASELDEN:** Yes, Your Honor.

14 **THE COURT:** Have I accurately stated the agreement
15 insofar as the defendant McMillan is concerned?

16 **MR. MATHEWS:** Yes, Your Honor.

17 **THE COURT:** Your client understands and waives any
18 defect that the juror might have?

19 **MR. BEACH:** Yes, sir.

20 **THE COURT:** Is that correct, Mr. McMillan?

21 **MR. MATHEWS:** Yes, sir.

22 **THE COURT:** Mr. Beach, have I accurately stated the
23 agreement as so far as Mr. Jakes is concerned?

24 **MR. BEACH:** You have, Your Honor.

25 **THE COURT:** Your client waives any defect or

1 find the defendant, Antwan D. McMillan, in indictment number
2 2010-504, guilty of attempted armed robbery as to Amanda
3 Metzfield.

4 Question Eighteen, we, the jury, by unanimous consent,
5 find the defendant, Antwan D. McMillan, in indictment number
6 2010-506, guilty of attempted armed robbery as to Jesse
7 King.

8 Question Nineteen, we, the jury, by unanimous consent,
9 find the defendant, David Jakes, in indictment 2010-709,
10 guilty of possession of a weapon during the commission of or
11 attempt to commit a violent crime.

12 Question Twenty, we, the jury, by unanimous consent,
13 find the defendant, Antwan D. McMillan, in indictment 2010-
14 507, guilty of possession of a weapon during the commission
15 of or attempt to commit a violent crime, signed Dawn P.
16 Allen, Foreperson, dated September 1st, 2011.

17 Ladies and gentlemen of the jury, if this be your
18 verdict, as published by the Court, would you signify by
19 raising your right hand.

20 Let the record reflect twelve hands were raised.
21 Counsel, anything further from this jury before I excuse the
22 jury from the defendant McMillan?

23 **MR. MATHEWS:** No, Your Honor.

24 **THE COURT:** From the defendant Jakes?

25 **MR. BEACH:** I ask for a toll of the jury, Your Honor.

1 defendant is committed to the State Department of
2 Corrections for a term of 10 years. Those sentences will
3 run consecutive to each other for a total of 30 years.

4 Your other sentences, 2010 at 507, possession of a
5 weapon during the commission of a violent crime, 5 years.

6 2010 at 506, attempted armed robbery. The sentence of
7 the Court is you be committed for 20 years.

8 2010 at 503, which is assault and battery, first
9 degree. The sentence of the Court is defendant is committed
10 to the State Department of Corrections for a term of 10
11 years.

12 And at 2010 at 501, assault and battery, first degree,
13 the sentence of the Court is defendant is committed to the
14 State Department of Corrections for a term of 10 years.

15 And finally, on indictment 2010 at 504, attempted armed
16 robbery, the sentence of the Court as to Mr. McMillan, the
17 defendant is committed to the State Department of
18 Corrections for a term of 20 years. Those sentences, after
19 the first two, will run concurrent to each other.

20 The effect of the sentence is you are receiving a
21 sentence of 30 years imprisonment. Mr. Jakes, you are
22 receiving a total sentence of 35 years in prison.

23 Each of you will be given credit for time served. That
24 is pursuant to South Carolina Code Section 24-13-40. That
25 is to be calculated and applied by the State Department of

1 Corrections. This concludes sentencing in connection with
2 this matter, and as to this case, this Court now stands
3 adjourned.

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