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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TASHAN ANTOINE CARSON,

APPELLANT.

APPELLATE CASE NO. 2024-000975

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to grant an evidentiary hearing on appellant's motion for a new trial based on after discovered evidence where a juror alleged there was extraneous influence to reach a verdict by the bailiff?

STATEMENT OF THE CASE

On July 22, 2022, a Spartanburg County grand jury indicted appellant for threatening a public official, trafficking methamphetamine, possession with the intent to distribute methamphetamine within half mile of a school, two counts of possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, and second-degree burglary. Indictments. Appellant's case was called to trial before the Honorable J. Derham Cole and a jury on March 26-29, 2024. March 26, Tr. 1. Suzanne White represented appellant and Tyler Brown, assistant solicitor, prosecuted for the state. Tr. 1.

At the conclusion of trial, the jury found appellant was not guilty of second-degree burglary, one count of possession of a weapon during the commission of a violent crime, and possession with intent to distribute methamphetamine within half mile of a school. Tr. 268, l. 16—269, l. 2. The jury found appellant guilty of trafficking methamphetamine, one count possession of a weapon during the commission of a violent crime, unlawful possession of a weapon, and threatening a public official. Tr. 269, ll. 3-14.

On April 12, 2024, Judge Cole sentenced petitioner to concurrent terms of fifteen years' imprisonment, suspended to seven years' imprisonment and three years' probation for trafficking methamphetamine, five years' imprisonment for possession of a weapon during the commission of a violent crime, five years' imprisonment for threatening the life of a public official, and one year imprisonment for unlawful possession of a weapon. April 12, Tr. 11, l. 18—12, l. 7. Defense counsel moved to reconsider appellant's sentence for trafficking methamphetamine.

On April 24, 2024, counsel for appellant filed a written motion for new trial or evidentiary hearing on the motion, asserting that a juror indicated to counsel she felt pressured to vote guilty in contrast to her belief appellant was not guilty and that the bailiff had made

improper comments to her regarding rendering a verdict. Motion. Counsel included the juror's affidavit as an attachment. Affidavit. On May 16, 2024, Judge Cole granted appellant's motion to reconsider his sentence regarding the trafficking conviction and sentenced appellant to seven years' imprisonment. May 16, Tr. 2, l. 18—3, l. 1. Judge Cole also heard brief argument on appellant's motion to for a new trial based on after discovered evidence. May 16, Tr. 3, l. 6—5, l. 6. Judge Cole took the motion under advisement. May 16, Tr. 9, ll. 6-10. On May 29, 2024, Judge Cole denied appellant's motion for new trial by written order. Order.

This appeal follows.

STATEMENT OF FACTS

On March 22, 2022, assistant manager, Brian Bourret called police and reported appellant trespassing at the Marriott Hotel in downtown Spartanburg. March 27, Tr. 50, ll. 13-25; 52, l. 11—53, l. 21. Mr. Bourret encountered appellant on the sixth floor of the hotel, after being informed by hotel employees there was a situation he needed to investigate. Bourret testified appellant was walking around the hallway and when asked his name and room number, appellant pointed to a door and stated, "that room." Bourret asked again for his name and appellant told him to check the computer. March 27, Tr. 52, l. 8—53, l. 8. Bourret called police and when they arrived appellant was nowhere to be found.

He testified that later that day cleaning staff reported a person in room 515. March 27, Tr. 54, ll. 13-25. Bourret called police, and they returned to the hotel. Bourret stated appellant had not paid for room 515 and did not have permission to be in room 515 but Bourret admitted he did not check the hotel records to see if appellant had paid for any other room in the hotel. March 27, Tr. 56, ll. 7-23; 58, ll. 3-22.

One of the responding police officers, James Hayes, also testified during trial. Officer Hayes testified he arrived after two other officers, Fain and Peeler, were already at the hotel. March 27, Tr. 85, ll. 1-6. Hayes testified that when he asked his name appellant gave only his first name and began spelling it. He testified appellant "showed what [Hayes] perceived as non-compliance in walking away" further into the hotel room as they were speaking. Hayes said appellant looked irritated and grabbed a backpack, throwing it over his shoulders. Hayes claimed that for officer safety reasons he placed appellant in "investigative detention" and handcuffed him and removed appellant's backpack. During that interaction, appellant said he was going to "fuck [Hayes] up." At that point Hayes informed appellant he was under arrest for

threatening a public official. March 27, Tr. 88, l. 7—89, l. 25. He stated after appellant was arrested, he and the other officers searched appellant's body and his backpack and suspected drugs, and a firearm were found during the search. March 27, Tr. 90, l. 15—91, l. 9.

ARGUMENT

The trial court erred in failing to grant an evidentiary hearing on appellant's motion for a new trial based on after discovered evidence where a juror alleged there was extraneous influence to reach a verdict by the bailiff.

Relevant facts

The verdicts were published and the jury was polled. March 28, Tr. 269, l. 15—271, l. 9. After the jury was dismissed defense counsel commented "[j]uror 110, the last juror seemed to be sobbing." The court agreed but stated, "[i]t might be a difficult decision. She made it. She confirmed it. That's all I need to know." Defense counsel wanted the incident noted for the record. The court responded, "[t]hat tells me she's taking it very seriously." March 28, Tr. 273, ll. 8-20.

Appellant was sentenced on April 12, 2024. April 12, Tr. 11, l. 11—12, l. 12. At that time defense counsel made a motion to reconsider appellant's sentence. April 12, Tr. 12, ll. 22-24.

Subsequently, defense counsel filed a written motion for a new trial based on after discovered evidence. Motion. In the motion counsel asserted a juror approached counsel post-trial and indicated "she felt pressured to vote guilty on one or more of the pending charges in contrast to her belief of not guilty." Motion pg. 1. Counsel also asserted the same juror indicated a bailiff spoke to her during deliberations and based on their conversation the juror "felt trapped and forced to decide." Motion pg. 1. In the motion counsel argued appellant was entitled to a hearing on these allegations and that the burden was on the state to show the alleged contact with the juror was harmless to appellant pursuant to *Remmer*.[1] Counsel acknowledged

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1 *Remmer v. United States*, 347 U.S. 227 (1954).

the recent decision in *Green*,[2] but argued because the conversation between the bailiff and juror in this case the court "may invade the province of the [j]udge in the matter and could be prejudicial" and that appellant should be granted an evidentiary hearing on the matter. Motion.

Attached to the motion was the affidavit of the juror stating that the jury reached a verdict on one charge, threatening a public official. The juror stated after that a bailiff entered the jury room and asked if the jury reached a verdict on the remaining charges, and she told them "we could not and would not reach an agreement on the remaining charges." The juror stated that the bailiff asked if more time would help, and the juror stated "no" while everyone else stated "yes" and they were left to deliberate further. The juror felt trapped and held hostage until a verdict was reached. The juror, by affidavit, went on to state that when polled she felt too scared to say the verdict was not her own and that is why she was so emotional during the reading of the verdict. Affidavit.

The state filed a reply to counsel's motion. Reply. The state argued the allegations did not give rise to misconduct and did not give rise to presumption of prejudice or to a new trial. The state further asserted that the court should disregard any portion of the affidavit that went to internal communications between jurors in order to protect the privacy of the jury room. The state analogized the situation to *Shumpert* where the Court reached the ultimate conclusions that the juror's allegations "too closely resembled a case of buyer's remorse from a guilty verdict to be given much credence." *Shumpert v. State*, 378 S.C. 62, 661 S.E.2d 369 (2008). Reply.

On May 16, 2024, a hearing was held to address the motion to reconsider sentence which was granted. May 16, Tr. 2, l. 1—3, l. 3. Additionally, the court allowed brief argument from both sides regarding the motion for a new trial but declined to rule that day. May 16, Tr. 3-9.

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2 *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020).

Defense counsel contended the juror was present in court and that there should be a new trial or at the minimum an evidentiary hearing for a new trial. May 16, Tr. 3, l. 6—5, l. 6. At the conclusion the court stated it would rule by written order. May 16, Tr. 9, ll. 6-10.

On May 29, 2024, the court issued a written order denying appellant's motion. Order. The court concluded there was nothing presented to the court "tending to show that a juror's impartiality was compromised or that any juror's decision was the result of any improper bias or prejudice. The court declined to "accept the affidavit or conduct a hearing" on the matter. Order.

Standard of review

The trial court's ruling on a motion for new trial based on after-discovered evidence "will not be disturbed except for an error of law or abuse of discretion." *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). Where the trial judge's ruling is controlled by an error of law, this Court will reverse. *State v. Spann*, 334 S.C. 618, 622, 513 S.E.2d 98, 100 (1999)(holding trial judge committed an error of law in finding the newly discovered evidence could have been discovered by due diligence). "Only the trial court and not the appellate court has the power to weigh the evidence; the trial court's judgment will not be disturbed except for error of law or abuse of discretion." *Harris*, 391 S.C. at 545, 706 S.E.2d at 529.

Discussion

Pursuant to Rule 29(b) of the Rules of Criminal Procedure, a motion for a new trial based on after-discovered evidence must be made within one year after the date of actual discovery of the evidence. A motion for a new trial based on after-discovered evidence must be granted if the evidence "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered

prior to trial; (4) is material; and (5) is not merely cumulative or impeaching." *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009)(citing *State v. Spann*, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999)).

The South Carolina Rules of Evidence provide:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, **except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror**. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Rule, 606(b) SCRE (emphasis added).

In *State v. Hunter*, the South Carolina Supreme Court found a juror's testimony regarding her feelings of intimidation during deliberations was proper and investigation into the matter was necessary. 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). In *Hunter* the allegations concerned the influence of racial prejudice on the verdict. *Id.* In an *in camera* hearing the juror testified to that there were three situations in the jury room that "intimidated [her] and forced her to change her verdict from not guilty to guilty." *Id.* at 87, 463 S.E.2d 315. The Court stated that "[n]ormally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict." *Id.* at 88, 463 S.E.2d 316. However, the Court reasoned that "[w]hen an extraneous influence is alleged, juror testimony can normally be used." *Id.* If the alleged misconduct is internal, courts are more strict and allegations involving internal misconduct is competent only

when necessary to ensure due process. *Id.* Ultimately the Court did not find that juror conduct denied Hunter a fair trial. *Id.* at 89, 463 S.E.2d 316.

In *State v. Franklin*, this Court stated "generally, juror testimony is inadmissible to impeach a jury verdict." 341 S.C. 555, 560, 534 S.E.2d 716, 719 (Ct. App. 2000) (citing *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995). However, juror testimony or affidavits are admissible to prove an allegation of extraneous information or influence. *Id.* (juror testimony may normally be used when an extraneous influence is alleged); Rule 606(b), SCRE (testimony or affidavit of juror is admissible to demonstrate that outside prejudicial information was brought to jury's attention or that outside influence was placed on any juror). *Id.*

In *Franklin* a juror alleged, in an affidavit, that she was coerced to change her verdict through gender bias and discrimination. The juror's affidavit contained four allegations of harassment by her fellow jurors which caused her to change her vote to guilty. *Id.* at 561, 534, S.E.2d 718. Ultimately this Court found that the nature of the allegations did not "implicate due process" and found no further inquiry was necessary and a new trial was not warranted. *Id.* at 562, 534 S.E2d 720.

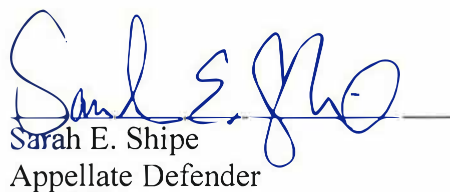
Franklin and *Hunter* demonstrate instances where it was necessary and proper for jurors to be questioned as to *internal misconduct* that may have impacted their deliberations. While ultimately the verdicts were upheld in both cases a hearing was granted to inquire of the jurors regarding those instances. Here, the inquiry is regarding both external and internal influences on this juror's ability to deliberate. A hearing was necessary in this case to discover whether the conversation with the bailiff or coercion from other members of the jury impacted jury deliberation. If a hearing were granted the lower court could consider and rule on any Rule 606 objections of the state as to specific questions of this juror.

"Generally, juror testimony may not be the basis for impeaching a jury verdict." *State v. Pittman*, 373 S.C. 527, 555–56, 647 S.E.2d 144, 158–59 (2007). "However, this rule is relaxed where there are allegations of external influence." *Id.* "The trial court may exercise broad discretion in assessing the prejudicial effect of an allegation of juror misconduct due to an external influence." *Id.* "The trial court should consider three factors when making this determination: (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice." *Id.* "The trial court's finding will not be disturbed absent an abuse of discretion." *Id.*

Appellant respectfully requests a hearing on his motion for new trial to permit the testimony of this juror regarding her allegations of external influence on her verdict.

CONCLUSION

Appellant respectfully requests this Court remand for a hearing on his motion for a new trial based on after-discovered evidence.



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ATTORNEY FOR APPELLANT

This 16th day of April, 2025.