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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY P. SPENCER,

APPELLANT

APPELLATE CASE NO. 2024-000685

FINAL BRIEF OF APPELLANT

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2.

Did the trial court err in refusing to grant a mistrial because of the solicitor's improper disparaging comments about defense counsel?

STATEMENT OF THE CASE

Appellant was indicted for murder in Laurens County and on April 15, 2024, was tried before the Honorable Donald B. Hocker and a jury. R.1. Joshua L. Thomas and Jared Simmons represented the State. R. 1. Chelsea B. McNeill, Joel T. Broome, and Tristan Shaffer represented appellant. R. 1. The jury convicted appellant. R. 1025-1026. Judge Hocker sentenced appellant to life imprisonment. R. 1035. This appeal follows.

STANDARD OF REVIEW

On Issue One, the standard of review is abuse of discretion. State v. Pradubsri, 403 S.C. 270, 276, 743 S.E.2d 98, 101 (Ct. App. 2013) (reversing the trial judge's refusal to allow cross-examination regarding mandatory minimum sentences witness avoided to show bias). "Before a trial judge may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate." State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002).

On Issue Two, "The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Inman, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011).

ARGUMENT

1.

The trial court erred in refusing to allow appellant to cross-examine the crime scene investigator about taking eight-to-ten Tramadol a day when the integrity of the crime scene was a key issue in the case.

The case against appellant Timothy Spencer for the murder of Billie Jean Cross was entirely circumstantial. Spencer worked as an HVAC repairman. Spencer had done work for Cross through a home warranty company and on December 9, 2021, she called Spencer because her heat was not working. R. 664. Spencer called her back, told her the price for a new unit, and Cross paid for the work over the phone. R. 644. Despite the police lying to him about nonexistent evidence and interviewing him several times, Spencer denied having anything to do with Cross's death. R. 719-721.

Cross's mother spoke to her on the morning of December 9 and she said she was waiting on the HVAC repairman. R. 77-88. Cross's mother became concerned when she could not reach her and midday on December 10, she and Cross's cousin, Kathy Warren, went to Cross's house with the police. R. 80, 88. Cross's car was in the driveway and her door was locked. R. 88-89. Warren said the locked door was unusual. R. 89. Cross was disabled and usually left her doors unlocked because she had a hard time getting to the door. R. 89.

Warren asked the police to break into the house, which she did. R. 89. The officer used a tool to break the glass and unlock the door. R. 102. Nothing inside was out of order. R. 89. A blue quilt was on the floor and when it was moved, the officer noticed a dark spot that she thought was blood. R. 104-107. The officer also noticed what she thought were drag marks. R. 107-109. The officer called for investigators. R. 111.

The crime scene investigator who responded was Robbie Haupfear with the Laurens County Sheriff's Office. R. 130-131. He took some photographs and a sample from the stain on the carpet. R. 131. Before cross-examination, defense counsel told the court he had a matter of law. R. 151.

Defense counsel learned that Haupfear had an addiction to pills and wanted to cross-examine him about it. R. 151-152. The State objected, first maintaining that nothing about a drug problem was in a personnel file the defense subpoenaed. R. 151-153. Judge Hocker allowed the defense to cross-examine Haupfear outside of the jury's presence to determine the admissibility. R. 153.

During the proffer, Haupfear admitted that he and "an issue with prescription medication" and that he suffered from this problem during the time he was at Cross's house. R. 154. Haupfear eventually told his supervisor about his problem and was placed on leave. R. 154-155. He ultimately left the Laurens Sheriff's office and was a school resource officer at the time of his trial testimony. R. 129, 154-155.

Haupfear was taking a prescription medication called Tramadol. R. 155. Tramadol is a Schedule IV controlled substance as a narcotic. 21 C.F.R. § 1308.14(b)(3). Haupfear said it was a "pain medication" and that he "was just starting to take too many of them at one time." R. 155. He claimed it had no effect on him because he had been taking it for a long time. R. 155-156. He was prescribed 50 milligram pills. R. 157. Haupfear admitted he was taking "eight to ten a day." R. 156. He said he was "roughly" taking 400-500mg per day. R. 157. When the solicitor examined him during the proffer, Haupfear said the pills did not affect his work on the case. R. 158.

Before hearing argument, Judge Hocker ruled he would not allow cross-examination about Tramadol. R. 159. The judge reasoned that Haupfear said the medication did not affect him and the defense would need a doctor to say that the amount of Tramadol would affect his ability to do his job. R. 159. The defense argued that the cross-examination was proper impeachment and relevant to the integrity of the investigation. R. 159-160. Haupfear's assertion that he was "fine" was proper fodder for cross-examination. R. 160-161. The judge replied that the cross-examination would invite speculation from the jury and refused to allow it. R. 161.

On cross-examination before the jury, the defense showed many problems with Haupfear's investigation at the scene. He agreed that keeping people out of a crime scene was important while it was processed, but that Cross's mother and Warren were permitted to stay inside while he worked. R. 168. No crime scene tape was used. R. 170. He was the last person to leave Cross's house. R. 170. The police locked the door, but put no seals or tape to secure the house. R. 171-173. The glass on the door was still broken and Haupfear admitted anyone could have opened the door. R. 174.

Haupfear did not check the windows to see if they were locked. R. 175. He did not dust for fingerprints around any of the windows. R. 175. He admitted he should have done that. R. 175. He admitted the house was left unsecured for four days until Cross's body was found on December 14. R. 176-177. When the police (and Haupfear) went back to the house on December 14, they did "all the processing that [they] didn't do on the 10th." R. 179.

On December 14, some prospective purchasers of rural property in Anderson County found Cross's body when they did a pre-closing walk-through. R. 198-199. The Anderson police who arrived immediately put up crime scene tape and notified forensics. R. 203. Cross was found with a scarf tied so tightly around her neck that the pathologist had a difficult time removing it. R. 420-

421. The doctor opined that Cross died from strangulation with blunt force trauma to the head as a contributing factor. R. 434-435.

The pathologist could not give a definitive time of death. R. 460. The State's theory was that Spencer killed Cross on December 9, put her body into a rolling trash can, and dumped both the body and the trash can in separate places. R. 50-51. But the pathologist said that from the condition of the body, December 9 was an "outlier" in terms of the possible dates she died. R. 449-450. She had no obvious decomposition of her body despite (per the State's theory) being outside in a field for four days. R. 458. Defense counsel asked, "But again, if she had been placed in that field, taking in all the factors that we talked about, the weather, the precipitation, the temperature fluctuation, the fact that she was wrapped in a blanket when she was found, it would be out of the norm for her to have died in the 9th." R. 461. The pathologist answered, "I think that is fair, yes." R. 461.

The night of December 9—the date the State claimed Spencer killed Cross—Cross's neighbor Carlos Gosnell saw a blue SUV parked in Cross's yard. R. 908-912. Gosnell said the car was unusual and he never saw other cars at Cross's house. R. 908-912. Gosnell thought it was a GMC Envoy. R. 911. The police noticed a blue Chevy Trailblazer at Spencer's house on December 15. A Trailblazer and Envoy look similar and Spencer's Trailblazer attracted the police's attention, but the Trailblazer was covered in debris, had obviously been sitting for a while, and did not run because of a blown engine. R. 751. R. 904-905. Def. Ex. 28, 30. The Trailblazer had a ladder tied to the roof. Def. Ex. 28, 30. Gosnell said the blue SUV he saw did not have a ladder on its roof. R. 911.

The police's best evidence against Spencer came from a GPS unit attached to his Dodge Ram truck placed there by the dealership who sold it to him and financed it. R. 334-337. The

police used the GPS to plot Spencer's truck's location on December 9. R. 687-695. According to the police's interpretation of the GPS data, Spencer's truck arrived at Cross's house on 11:31 AM and left only an hour later at 12:31 PM. R. 687-695. The GPS showed Spencer's truck then drove around Anderson County, including the spots where the police found Cross's body and her trash can. R. 687-695. But as defense counsel pointed out in closing, the GPS data was merely suspicious because appellant lived in the area and went by these places frequently. R. 1003.

When the police arrested Spencer, he had no defensive wounds. R. 173-184. The police found no DNA evidence matching Spencer. R. 498. But on the t-shirt Cross was wearing, the police found a mixture of three people. R. 500-501. One of these people was Cross, but the other two were not identified. R. 500. Spencer was excluded as one of the contributors. R. 500-501.

The trial judge erred in refusing to allow impeachment of Officer Haupfear. The evidence of his drug problem was relevant to the integrity of the investigation. Relevancy is a low bar and has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." Rule 401, SCRE. "The Sixth Amendment guarantees a criminal defendant the right to meaningful cross-examination of adverse witnesses." State v. Starnes, 340 S.C. 312, 325, 531 S.E.2d 907, 914 (2000).

The trial court essentially granted the State's objection to the cross-examination as a Rule 403 objection, although the State made no specific argument other than denying such evidence existed before Haupfear testified in the proffer. Haupfear's ability to do his job unimpaired was probative. It showed that the police did no real investigation of the supposed scene of the murder on December 9 and left the house unsecured. The house remained unsecured for four days, including when Gosnell saw an unusual SUV that could not have been Spencer's late at night.

No potential for unfair prejudice existed. Haupfear admitted his drug problem. He admitted taking massive amounts of Tramadol. He admitted he was taking Tramadol during the period he was at Cross's house. The trial judge's concerns about speculation did not relate to the admissibility of the evidence, but to the need for cross-examination and redirect by the solicitor. Haupfear's credibility as to whether ten Tramadol would affect him was for the jury to decide.

The inadequacy of a police investigation is a legitimate defense strategy. State v. Wright, 140 A.3d 939, 945-46 (Conn. 2016). "[I]t is proper to explore the drug addiction of a witness in order to attack his credibility and capacity to observe the events in question." United States v. Sampol, 636 F.2d 621, 666-67 (6th Cir. 1980). The Sampol court noted that cross-examination about a witness's drug use can be explosive and required the defense to establish that the witness was using drugs at the time of the event. Id. Officer Haupfear admitted his Tramadol use at the time. See also Wilson v. United States, 232 U.S. 563, 567-68 (1914) (finding no error in cross-examining a witness about her morphine addiction as it had a material bearing on her reliability).

In United States v. Fowler, 465 F.2d 664, 665 (D.C. Cir. 1972), an undercover agent and principal witness for the government refused a drug test. The police dismissed the agent and put as the reason that he was underweight. Id. "Under such circumstances we conclude defense counsel had a right to cross examine the agent as to the true reasons for his dismissal, and as to whether he was using narcotics at the time he observed appellant commit the alleged offense." Id. "The obvious ground for such cross examination would be to determine the witness' credibility and his powers of observation at the time he observed the offense." Id. See also, United States v. Garrett, 542 F.2d 23, 26 (6th Cir. 1976) (finding defendant was entitled to cross-examine police officer about his narcotics use). In Fowler and Garrett, the defense was stuck only with an officer's

refusal of a drug test. But here, Officer Haupfear admitted his drug use. The probative value in appellant's case is substantial.

The defense's theme in its closing argument was that the police investigation was sloppy and they did nothing to follow other leads—including the car seen by Gosnell and the DNA on her body—because they had the GPS data. R. 985-1007. Showing that the crime scene investigator was drug-addled on December 9 would have significantly bolstered the defense's theme and the power of this argument. The jury would have seen the State's excessive focus on the GPS evidence in a different light—as one that allowed sloppy police work. With no direct evidence, no DNA, no fingerprints, and a weak motive, this error cannot be harmless and this Court should reverse.

2.

The trial court erred in refusing to grant a mistrial because of the solicitor's improper disparaging comments about defense counsel.

The solicitor made an improper closing argument disparaging defense counsel and contrasting their "job" with his "job" of bringing the jury "the evidence that you need to reach a verdict in this case." R. 951-952. The solicitor began this line of argument by telling the jury that "Everybody in this courtroom has a job, right?" R. 951-952. Judge Hocker's "job" was to explain the law "call the balls and strikes sort of down the middle, make sure that this trial is fair." R. 951-952.

The solicitor next addressed the "job" of defense counsel in a disparaging manner that was highly improper. The solicitor said:

> The Defense attorneys: the Defense team, they've got a job too, and their job is to represent Mr. Spencer's interest. Mr. Spencer's interest in this case is not for you to understand what really happened to Billy Jean Cross.

> Mr. Spencer's interest is counter to that, and they have done a very good job of representing him this—these last couple weeks. If a witness took this stand and they did something wrong or they made a mistake, they heard about it. You heard about it.
>
> The Defense's job is to poke holes in the case, to poke holes in the evidence, to try to distract you, to try and get you confused about what really happened. Make no mistake about it. They're trying to muddy the waters, but that's their job, and that's fine.

R. 951-952.

Defense counsel apparently emailed the judge the relevant case—Fortune v. State, 428 S.C. 545, 837 S.E.2d 37 (2019)—during the solicitor's closing argument. R. 979. During the break between arguments, the defense moved for a mistrial because of the solicitor's improper comments disparaging their "job." R. 979-985. After reviewing Fortune and the other cases cited by the defense, the trial judge indicated the phrase "muddy the waters" was improper and offered a curative instruction. R. 979-985. Defense counsel accepted the curative, but stated that the curative would not undo the prejudice and maintained that a mistrial was required, offering to approach after the curative to renew the objection. R. 979-985. The trial judge said, "You're protected on the record." R. 979-985. Defense counsel renewed the mistrial request after closings were completed and again after the verdict. R. 1011-1012; 1029.

The Fortune Court said that remarks like the solicitors have been "universally condemned." Fortune at 551-52, 837 S.E.2d at 40-41. The solicitor in Fortune said his "job" was to "show the truth." Id. Here the solicitor did not say "truth," but said his "job" was to bring the jury the evidence it needed for a verdict.

More on point are the solicitor's comments disparaging the defense in Fortune. Like here, the solicitor contrasted his "job" with the "job" of defense counsel. "On the other hand, the defense attorneys' jobs are to manipulate the truth. Their job is to shroud the truth. Their job is [to] confuse

jurors. Their job is to do whatever they have to—without regard for the truth—to get a not guilty verdict." Id.

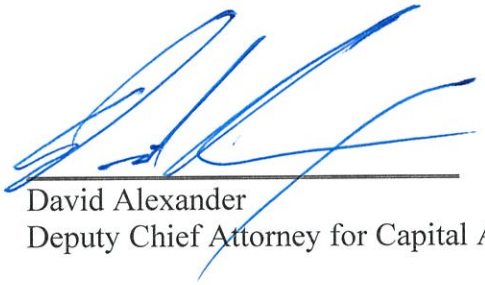
Fortune first condemned the improper remarks by the solicitor about his job being about the truth. Next, the Court wrote, "The assistant solicitor in this case also improperly characterized the role of defense counsel. We find this misconduct is also inexcusable." Id. at 554-55, 837 S.E.2d at 42. The Fortune Court cited with approval United States v. Vaccaro, 115 F.3d 1211, 1218 (5th Cir. 1997) in which a solicitor's argument that defense counsel "muddle the issues" is "clearly improper." Id.

No difference exists between "muddle the issues" and "muddy the waters." The Fortune Court found that the improper argument so infected the trial with unfairness that reversal was required. Here, the error was not cured by the Court's instruction not to consider the "muddy the waters" comment. The damage had been done.

While the comments here are not as inflammatory on the surface as in Fortune, the context was more devastating. Fortune was a self-defense case and there was no dispute the defendant shot the victim. In appellant's case, the defense was the weak circumstantial evidence and the sloppy investigation. Pointing out the deficient investigation increased the likelihood the jury would find the State did not meet its burden of proving reasonable doubt and could have concluded that someone else committed the crime. Saying defense counsel was trying to confuse the jury and "muddy the waters" by pointing out the police mistakes and absent evidence went to the heart of the defense's strategy. The facts of this case make the remarks by the solicitor more damaging than in Fortune. While judges understandably are reluctant to grant a mistrial after two weeks of hard fighting from both sides, the solicitor's comments here were entirely improper and deprived appellant of a fair trial. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 3rd day of October, 2025.

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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APPELLATE CASE NO. 2024-000685

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Amended Initial Brief of Appellant and Designation of Matter 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 3rd day of October, 2025.

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