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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State,Respondent,

v.

Kendrick Montrez Lee,Appellant.

**KENDRICK LEE'S RETURN TO
STATE'S PETITION FOR REHEARING**

On July 1, 2026, this Court reversed Kendrick Lee's conviction and sentence and remanded this case for a new trial. *State v. Lee*, No. 2023-001843, 2026 WL 1884535, (S.C. Ct. App. July 1, 2026). On July 15, 2026, the State petitioned for rehearing and Mr. Lee cross-petitioned for rehearing. By letter dated July 17, 2026, this Court requested returns. Mr. Lee's return follows.

Mr. Lee presented seven questions for this Court to review. The first three issues pertained to selections of the jurors:

1. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?
2. Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

3. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

In reversing the trial court, this Court's opinion resolved only the third issue and held, "[T]he trial court erred by excusing Juror 191 due to a hearing impairment without inquiring as to whether such impairment could be accommodated." *Lee*, at *3. The State's raises three issues in its' petition: (a) misapplication of S.C. Code Ann. § 14-7-1020, (b) improper reliance on caselaw from other jurisdictions, and (c) lack of prejudice. Mr. Lee will respond to each argument.

A. S.C. Code Ann. §§ 14-7-810, 1010 and 1020.

As pointed out in Mr. Lee's brief, section 14-7-1010 requires, "The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law." Final Brief of Appellant, p. 14 (citing *State v. Wise*, 359 S.C. 14, 22, 596 S.E.2d 475, 479 (2004)). A juror is disqualified when "[h]e is unable to read, write, speak, or understand the English language." S.C. Code Ann. § 14-7-810(2). This section places an obligation on the trial judge to make this determination. Here, the trial court did not even inquire into whether Juror 191 could be accommodated, even though the juror stated he could hear out of one ear."¹ As Mr. Lee argued, "[a] failure to exercise discretion amounts to an abuse of that discretion." Final Brief of Appellant, p. 15 (quoting *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015)). Although the State's rehearing petition acknowledges section 14-7-1010, the State does not address the trial judge's abuse of discretion under sections 14-7-810 and 1010.

¹ To State the obvious, Juror 191 would not have made this statement unless he was able to understand the English language.

The State argues, “As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire questioning, *which Appellant notably never requested.*” State’s Petition, pp. 1-2 (citing S.C. Code Ann. § 14-7-1020) (emphasis added). This argument misstates the record.² The trial judge addressed Juror 191’s service at a sidebar (R. 79) and placed the discussion on the record (R. 82). Later, Mr. Lee elaborated on the sidebar, noted accommodations “include[] asking the juror what circumstances would ensure that they would be able to hear what was going on in the courtroom,” and pointed out the trial court “didn’t even entertain asking the juror about whether or not he could be accommodated.” R. 118-19.

B. Authority from Other Jurisdictions.

This State argues:

This Court's reliance on foreign authority to impose a requirement on the trial court to further inquire if Juror 191's hearing loss could be accommodated is also without merit. This court need not look farther than established South Carolina law because the record supports the trial court's decision and Juror 191 provided a reasonable basis for that decision by his lack of timely disclosure and admission that he did not hear all of voir dire questioning.

Petition for Rehearing, p. 4.

² The State’s rehearing petition is confusing. At one point, the State seems to argue that Mr. Lee never requested any questioning on Juror 191, which is not true. Later the State argues, “Appellant did not request additional voir dire questioning of Juror 191. Instead, his only request was for the trial court to inquire if Juror 191’s apparent hearing impairment could be accommodated.” State’s Petition for Rehearing, p. 5. This passage acknowledges Mr. Lee requested the trial judge determine whether Juror 191 could be accommodated and seemingly argues for a hyper-technical application of section 14-7-1020. This Court was correct to consider section 14-7-1020 in determining whether the trial court abused its discretion.

This State is wrong. The persuasive authorities this Court cited from other jurisdictions are consistent with our state's precedent that "[a] failure to exercise discretion amounts to an abuse of that discretion." *State v. Hawes*, 411 S.C. at 191, 767 S.E.2d at 708.

C. Prejudice.

The first three questions presented in Mr. Lee's appeal involve structural error in the jury selection, including the judicial system's failure to ensure that a cross-section of the community responded to juror summons and prosecutors' pretextual use of minor criminal records to exclude minority jurors. "[A]n error is structural if it is 'the type of error which transcends the criminal process.'" *State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 311 (1991)). Structural error is not subject to a harmless error analysis and requires automatic reversal.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for rehearing.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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