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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2025-000767

THE STATE, Respondent,

v.

ALTARIQ J. COLE, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for a mistrial.

STATEMENT OF THE CASE

Appellant was indicted in July of 2024 for two counts of attempted murder. Appellant proceeded to a jury trial April 7-11, 2025, in Lexington County before the Honorable Diane Schafer Goodstein. Appellant was tried jointly with two co-defendants Dyshawn Hines and Vernon Jenkins. The jury found Appellant guilty of both charges. He was sentenced to thirty years' imprisonment for each count of attempted murder. This appeal follows.

STATEMENT OF FACTS

On February 20, 2023, a shooting occurred outside the Country Inn and Suites on Piney Grove Road in Lexington County. (Tr. 288, 294-296, 309, 345-347). Kenneth Washington and Tyreka Cain were in the backseat of Washington's white Honda Accord in the hotel parking lot when a car and a black SUV pulled up close to the vehicle and blocked in his vehicle. (Tr. 295-300, 352-361). Three to four people jumped out of the vehicles, surrounded the car, and began ordering Cain and Washington out of the car. (Tr. 356-358). Washington attempted to reach to the front to start his vehicle when shots were fired and he was hit multiple times. (Tr. 360). Washington was able to get his own gun and fire off one shot in an attempt to scare the shooters away. (Tr. 360-361).

Multiple people called 911, one of which was able to provide dispatch with the tag number of the car he observed speeding out of the parking lot. (Tr. 345-347). Stephanie Cobb with Lexington County Sherriff's Department was able to determine that the license plate was associated with a light-colored sedan owned by Karim Hampton and Kendra Bryant. (Tr. 788). Cobb made contact with Hampton about a month later and he told her that he had been dropping off a Lyft at that location and he heard gunshots and sped out of there. (Tr. 790). Cobb then met with Hampton in person where he explained what his involvement was and that he wanted to be honest with her. (Tr. 792). Hampton testified to the story he confessed to Cobb at trial.

He testified that the evening of the shooting, Vernon Jenkins, whom Hampton knew from growing up in New Jersey, contacted him and asked him to meet up. (Tr. 556-559). Hampton stated that he met up with Jenkins and three other guys, who were in a black SUV. (Tr. 560). Hamptons stated that Jenkins introduced two of the three men as Riq and Body. Hampton testified that he was familiar with Riq because he was also from New Jersey and they grew up in the same neighborhood. (Tr. 561). Hampton testified that he learned from Jenkins that Hines had been

robbed by a guy called Gang, and Jenkins was seeking Hampton's help in finding Gang or a woman with whom he was associated with. (Tr. 562-564). Jenkins got into the vehicle with Hampton and Riq drove in the black SUV looking for a hotel for the men to stay at while they were in town. (Tr. 564-566).

They all eventually went to the Country Inn and Suites. (Tr. 566). Hampton testified that when they got to the hotel, Jenkins thought he saw a car that Body had told him "the guy" might be driving, and Jenkins told Hampton to pull behind the white car. Then the black SUV pulled in past them. (Tr. 568-571). Hampton testified that everyone but him got out of the two vehicles, looked at the vehicle and then began shooting into the car. (Tr. 572-574). Hampton testified that he tried to leave as they were shooting but Body and Jenkins jumped in his car. (Tr. 574-575). Hampton then drove them to a house that he assumed was Body's house. (Tr. 576).

Additional evidence introduced at trial included forensic firearms evidence, cell phone mapping evidence, and incriminating cell phone related data. Expert testimony established that .40 caliber shell casings found at the scene were shot from a gun found during the search of Jenkins residence. (Tr. 448, 464-465). A .380 caliber shell casing was found at the scene and evidence was introduced that Cole attempted to sell a .380 caliber pistol used in the shooting afterwards. (Tr. 411-412, 443-445, 475-476, 665-671). Screen shots of the article regarding the shooting were found in Hines's phone and in the search history after the incident occurred. (Tr. 716-721). Cellular Mapping evidence showed Cole and Jenkins's phones could have been in the Piney Grove area at the time of the shooting. (Tr. 944-945).

After several witnesses had testified, the jury foreperson sent a note in which stated Juror 232 indicated Cole looked familiar from her job as a cashier at the Amoco station. (Court's Exhibit 8). The court brought Juror 232 and spoke with her outside the presence of the other jurors. (Tr.

314-315). Juror 232 stated that she was "just scared, I guess. So I don't want him to – he's—I don't want him to go there and be at my job and...that's all" (Tr. 314-315). The Court determined it would excuse Juror 232 and substitute an alternate. (Tr. 315-316). Juror stated that she mentioned that she might know Appellant and that he might know where she worked to several other jurors. (Tr. 313-320).

Defense counsel for Appellant moved for a mistrial, arguing that Juror 232 had talked to other jurors, and "even if she did not say she was scared," "the assumption is that I'm concerned that he might come to my work." (Tr. 321). "So I think that taints the jury's mind already that he's someone that they should fear and that's—that's not fair to my client to go forward with that." (Tr. 321). The trial judge brought out each juror individually and questioned them about what they had heard and whether they could be fair and impartial. (Tr. 323-340). Most of the jurors stated that they heard jurors say she thought she knew Appellant from her job (Tr. 324-341). Juror 59 stated that they heard her say she was "a little concerned that one of them recognized her at her job. I don't know which one, but yeah." (Tr. 338). Three of the jurors did not hear any comments. (Tr. 324-341). All of the jurors stated they could be fair and impartial, and the comments did not affect them. (Tr. 324-341).

After questioning the jury the trial judge stated:

> I will make a specific finding that I have examined—I have examined the jurors and the alternates and I am satisfied that a mistrial is not required. As we are all aware, mistrials are to be granted under the most extreme circumstances. I am satisfied that to grant a mistrial would be inappropriate. I am satisfied that the jurors and the alternates have been candid; that while several have certainly heard this conversation, it certainly wasn't of a nature to interfere with their ability to be fair to the State, as well as to the defendants. I've observed them, I've spoken with them, and I am quite satisfied that they can go forward being fair and impartial to the state, as well as to the defendants, and any comments that they heard that were made by this particular juror were no more than she thought she recognized one of the defendant from where she works and it did not have an impact—does not have

> an impact on their ability to be fair and impartial jurors, and I would respectfully deny the motion for mistrial motion.

(Tr. 341-342). Defense counsel reiterated her mistrial motion, specifically noting that Juror 59 indicated that Juror 232 "appeared concerned that he might know her and if she said it in front of the group one person recognizing concern, it would be my position that all that heard recognized concerns." (Tr. 342). The trial judge responded "Just given their demeanor, I'm satisfied that they will be able to dismiss her wondering and believing perhaps without certainty that she recognized—and some of them didn't hear, some of them didn't hear with great specificity, and I am quite confident that the remaining jurors can proceed and would be fair and reasonable." (Tr. 343).

STANDARD OF REVIEW

"The decision to grant or deny a motion for a mistrial is a matter within a trial court's discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). Whether a mistrial is necessary is decided on a case by case basis. "It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." State v. Rowlands, 343 S.C. 454, 457-458, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 445, 460 (Ct. App. 2005). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

ARGUMENT

I. The trial judge properly denied Appellant's motion for a mistrial.

Appellant argues the trial judge erred in refusing to grant a mistrial where jurors heard another juror express concern that Appellant recognized the juror from her job. Specifically, that because she "was excused based on her fear of Appellant", her comments improperly compromised jury impartiality.

"[W]hether to grant or deny a mistrial is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." State v. Herring, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009). Whether a mistrial is manifestly necessary is a fact specific inquiry. "It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." State v. Rowlands, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). This Court "favors the exercise of a **wise discretion of the circuit judge** in determining the merits of such motion in each individual case." State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 309 (1976) (emphasis added) (quoting State v. Singleton, 167 S.C. 543, 166 S.E. 725 (1932)). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

"The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "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." State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010).

"Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." State v. White, 371 S.C. 439, 447-448, 639 S.E.2d 160, 164 (Ct. App. 2006). "The granting of a motion for mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009).

"A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury; and, in order to fully safeguard this basic protection, it is required that the jury render its verdict free from outside influences." State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979). "The general test for evaluating alleged juror misconduct is whether there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence." State v. Smith, 338 S.C. 66, 72, 525 S.E.2d 263, 266 (Ct. App. 1999). "The trial court has broad discretion in assessing allegation of juror misconduct ... [t]he determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court." State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998).

In State v. Sparkman[1], during voir dire the potential jurors were asked if they had ever been a victim of a serious crime. Scott, who later was picked and served as the foreperson for the jury did not stand at that time. The jury deliberated for eight hours and found Sparkman guilty. Id. Sometime between the verdict and the sentencing hearing, a member of the jury contacted the defendant's attorney stating that Scott may have decided to convict Sparkman based upon something that happened to him in the past. Id. At the sentencing hearing, the juror testified that

[1] State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375 (2004).

during jury deliberation, upon discussing eyewitness credibility, Scott announced that forty years ago he had been the victim of an attack and that he would never forget the face of his attacker. Id. The trial judge questioned Scott about the past incident, asking Scott why he did not stand up during voir dire and inform the parties that he was a victim of a serious crime. Scott explained that he did not remember his attack until after deliberations began and that he was unsure whether the attack was a "serious" crime. Id. The trial judge then questioned each juror about whether Scott's comments regarding his past experience affected their decision to convict, and they unanimously replied that it did not. Id. A motion for mistrial was made and denied and the decision to deny was affirmed by this court. Id. Our Supreme Court affirmed the Court of Appeals ruling that Scott's concealment was unintentional and that because the jury unanimously replied that it did not affect their decisions "the jury testimony is clearly contrary to an inference of bias or prejudice, and the trial judge was in the best position to make a factual decision concerning the effects of Scott's alleged misconduct." Id at 497, 596 S.E.2d at 378.

Similarly, in this case the trial judge asked each individual juror what they heard and whether it affected their ability to be impartial. The Jurors stated that all they heard was that she might recognize him and it didn't affect their ability to be impartial. Appellant points to Juror 59 stating that they indicated Juror 232 "appeared concerned that he might know her" and that because that juror recognized concern it prejudiced them. That's an assumption that the concern was her fear of the defendant and not her concern about whether she should bring the topic up to the trial judge. Even if it was actual fear of the defendant, it did not rise to the comments made in Sparkman and our Supreme Court held that the individual questioning of the jury was sufficient and a mistrial was not appropriate.

Further, the State's evidence supporting Appellant's guilt was extremely strong. A .380 caliber shell casing was found at the scene and evidence was introduced that Appellant attempted to sell a .380 caliber pistol used in the shooting afterwards. (Tr. 411-412, 443-445, 475-476, 665-671). There was also a .380 caliber pistol recovered a mile and a half from Appellant's address. (Tr. 839- 840). Cellular Mapping evidence showed Cole and Jenkins' phones could have been in the Piney Grove area at the time of the shooting. (Tr. 944-945). There was lots of contact between Jenkins and Appellant in the days surrounding the incident. (Tr. 936). The trial judge quickly questioned the juror and excused them and properly investigated the potential prejudice from the jurors' comments. Therefore, the trial judge properly denied Appellant's motion for a mistrial and the ruling should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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