THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. The identification issue is preserved for review.

Contrary to the State's argument, the issue concerning the admissibility of the identification evidence is preserved for review. The trial court ruled on the admissibility of the evidence pre-trial, and the trial court's ruling was final. No new evidence was presented between the time the ruling was made and the evidence was introduced that would have changed the court's ruling. Accordingly, Sprinkle's counsel did not need to renew the objection at trial in order to preserve the issue for review.

A contemporaneous objection is typically required to preserve an issue for appellate review, even where the court has previously ruled on a motion in limine. *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (citing *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996)). But when the trial court has previously indicated that a ruling is final, a renewed, contemporaneous objection is not necessary to preserve the issue for review. *State v. Wiles*, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009). A contemporaneous objection is also unnecessary when the trial court makes a ruling on the admissibility of evidence immediately prior to the introduction of the evidence. *Forrester*, 343 S.C. at 642, 541 S.E.2d at 840 (quoting *State v. Mueller*, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410 (Ct. App. 1995)).

Here, the trial court ruled on the admissibility of the identification evidence before trial, during the *Neil v. Biggers* hearing. The trial court made the ruling after hearing testimony from one of the victims (Wright) and one of the investigators. The trial court considered the objections of Sprinkle's counsel, who argued that the evidence was inadmissible because it was unduly suggestive and unreliable. (R. pp. 41-45.) The

trial court also heard from the State. After considering the testimony presented and the argument of counsel, the trial court ruled that the identification evidence was reliable. There was no indication that any portion of the ruling remained open or that the court planned to revisit the issue at trial. (Rr. pp. 47-48.) The ruling was final.

Additionally, there was no new evidence presented at trial that would have changed the trial court's ruling. Wright was the State's first witness, and it was during his testimony that the identification evidence was admitted into evidence. (R. pp. 154-155.) Because Wright was the same witness who provided the identification evidence pre-trial and he was the first witness to testify at trial, there was no new evidence that would have changed the trial court's ruling. Accordingly, counsel for Sprinkle did not need to renew the objection to preserve the issue for review. *See Forrester*, 343 S.C. at 642-43, 541 S.E.2d at 840 (holding that the issue was properly preserved for review even without contemporaneous objection, where the witness introducing the evidence sought to be suppressed was the trial's first witness).

II. Sprinkle should have been permitted to cross-examine Echols regarding the federal charges.

Sprinkle should have been permitted to cross-examine Echols regarding the federal charges because the charges may have revealed evidence of bias. Had the jury known about the federal charges and the plea deal offered by the State, the jury may not have believed Echols and may not have convicted Sprinkle. Echols was the only witness who provided testimony that Sprinkle helped plan the crime and that Sprinkle assaulted Rumph. The limitation on Sprinkle's ability to cross-examine Echols was reversible error.

The fact that the charges against Echols are federal versus state, or that the State lacks the authority to negotiate deals regarding federal charges, does not mean that the cross examination would have been pointless. Sprinkle should have been given the opportunity to explore the issue of what had been negotiated between Echols and the State. Sprinkle was not, as the State contends, solely trying to elicit the evidence for purposes of showing prior bad acts. The jury already knew that Echols was a criminal and that he participated in the crime. Showing that Echols had committed prior bad acts would have been cumulative evidence that may or may not have helped Sprinkle's case. What Sprinkle needed to show, and the reason Sprinkle needed the ability to fully cross examine Echols, was that Echols had been offered a deal by the State in exchange for his testimony against Sprinkle, and that the deal benefitted Echols.

Echols had good reason to help the State. Doing so could help him obtain leniency on the federal charges. Like state court judges, federal judges are vested with broad discretion to consider mitigating or aggravating evidence when sentencing a defendant. *See, e.g.*, 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); *U.S. v. Watts*, 519 U.S. 148, 151 (1997) (discussing "the longstanding principle that sentencing courts have broad discretion to consider various kinds of information"); *U.S. v. Bruno*, 879 F.2d 691, 693 (3d Cir. 1990) (discussing provisions of 18 U.S.C. § 3661, which requires consideration of "the pertinent circumstances," including "information tendered by a defendant" and "cooperation by a defendant"); *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189,

191 (1967) ("We have held that with the view of fixing the sentence to be imposed upon a defendant, it is proper for the trial judge . . . to inquire into any relevant facts in aggravation or mitigation of punishment.") (citations omitted).

Further, federal courts may consider information about pending state court charges during sentencing. *United States v. Tockes*, 530 F.3d 628, 633 (7th Cir. 2008) (holding that the district court acted within its discretion in allowing testimony about pending state charges during sentencing because "the court is required to consider . . . the history and characteristics of the defendant" and its inquiry is "broad in scope, largely unlimited either as to the kind of information it may consider, or the source from which it might come") (internal citation omitted). *See also United States v. Ray*, 683 F.2d 1116, 1120-21 (7th Cir. 1982) (holding that it was proper for federal judge to consider information like the defendant's conduct in a prior state court trial, such as shouting an obscenity at the state court judge).

Moreover, Sprinkle was entitled under South Carolina law to elicit any fact that "tends to show interest, bias, or partiality of the witness." *State v. Mizell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). *Mizell* does not, as the State contends, limit the testimony that may be elicited to testimony regarding the plea negotiations, i.e., that there was no plea deal. Not only was Sprinkle prevented from eliciting testimony regarding plea negotiations that could be used to demonstrate bias, he was prohibited from confronting Echols's statement that he (Echols) was providing the testimony "out of the goodness of his heart." (R. p. 212, lines 14-22.) Sprinkle should have been permitted to cross-examine Echols regarding this statement and Echols's negotiations with the State.

This limitation on Sprinkle's ability to fully cross examine Echols was not harmless. Echols provided the only evidence that Sprinkle helped plan the crime and that Sprinkle assaulted Rumph. Echols's testimony was in direct conflict with Sprinkle's statement to the police, which was that he was on drugs and that he ran out of the house when he saw Echols assaulting someone. (R. pp. 189-197.) Given the variance in testimony, and the credibility issues of the witnesses who testified, the denial of Sprinkle's right to present the full picture of possible bias to the jury was reversible error. *See State v. Gracely*, 399 S.C. 363, 377, 731 S.E.2d 880, 887 (2012) ("In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless.").

III. There was no evidence from which Sprinkle's guilt could be fairly and logically deduced.

Because the limitation on the cross examination of Echols was an error of law, and because Sprinkle's guilt could not be fairly and logically deduced without Echols's testimony, the trial court erred in denying Sprinkle's motion for directed verdict. Echols was the only witness who testified that Sprinkle entered the home with the intent to commit a crime and was the only witness who testified that Sprinkle assaulted Rumph. Without Echols's testimony, there was no evidence to support the first-degree burglary and assault and battery convictions, and even with Echols's testimony, there was no evidence to support the conviction of armed robbery.

Contrary to what the State argues, evidence concerning what Sprinkle did once inside the home is not evidence that Sprinkle entered the home with the intent to commit a crime, especially when Echols testified that he (Echols) planned the crime with two

other people (who were lifelong friends, not Sprinkle), and that he was the one who knocked on the door and gained entry into the home, knowing the victims and knowing that there was money inside the house. (R. p. 206; p. 208; p. 212; pp. 244-45; p. 247.) There is no evidence that Sprinkle knew any of this or that he went to the house with the intention of committing a crime.

Additionally, there was not, as the State suggests, evidence that two people convinced Wright to open the door. Echols testified that *he* was the one who knocked on the door and asked to use the phone. (R. p. 208, lines 8-12.) Echols asked if "Uncle Rocky," meaning Rumph, was home. (R. p. 117, line 1.) There is no evidence that another person spoke or helped convince Wright to open the door. Additionally, there was no evidence presented that Sprinkle knew Rumph or would have referred to him as "Uncle Rocky." Rumph never even identified Sprinkle as being at the scene of the crime. Echols, not Sprinkle, is the one who had the relationship that convinced Wright to open the door.

Finally, Echols's testimony was not "substantially corroborated by testimony from Rumph and Wright" as argued by the State. Rumph and Wright did not present any evidence that Sprinkle was at the scene by "pre-arrangement to aid, encourage or abet in the perpetration of the crime." *State v. Mattison*, 388 S.C. 469, 480, 697 S.E.2d 578, 584 (2010). Rumph never even identified Sprinkle as one of the perpetrators despite being shown several lineups. Additionally, no evidence was presented that Sprinkle stole anything from the house, and the jury did not convict Sprinkle of assaulting Wright.

Given these circumstances and the fact that the evidence to support the convictions came from a witness who was a co-perpetrator and whom Sprinkle was not

permitted to fully cross examine, the trial court erred in denying the motions for a directed verdict and for a new trial.

IV. The failure to charge the lesser-included offense of assault and battery in the second degree was reversible error.

The failure to charge the lesser-included offense of assault and battery in the second degree is reversible error. The fact that Sprinkle was ultimately convicted of first-degree burglary does not mean that failure to charge the lesser-included offense was harmless. The determination of whether an error is harmless should not be viewed in hindsight, after the verdicts are rendered, but rather based on the evidence in the record at the time the charge was requested. The trial court "must charge a lesser included offense if there is *any evidence* from which a jury could infer the defendant committed the lesser rather than the greater offense:" *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) (citing *Brightman v. State*, 336 S.C. 348, 350-51, 520 S.E.2d 614, 615 (1999)) (emphasis added).

Because there was evidence from which the jury could conclude that Sprinkle committed the lesser-included offense of assault and battery in the second degree, and the burglary conviction was error as explained above, the trial judge should have charged the lesser included offense of assault and battery in the second degree.

CONCLUSION

Sprinkle's convictions should be reversed and the case should be remanded for a new trial.

Respectfully submitted,

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June 24, 2014

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply 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."

June 24, 2014.

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PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Respondent State of South Carolina by depositing a copy in the United States Mail, postage prepaid, on June 24, 2014, addressed to the attorney of record, J. Benjamin Aplin, Assistant Attorney General, Office of the South Carolina Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

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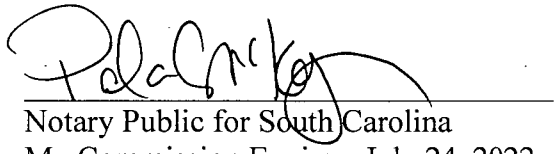

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