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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREG K. ISAAC,

APPELLANT

APPELLATE CASE # 2013-002168

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

STATEMENT OF FACTS 5

ARGUMENT 11

CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Chambers v. Mississippi, 410 U.S. 284, 302 (1973)..... 12

Giglio v. United States, 405 U.S. 150 (1972)..... 12

State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991) 13

State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011) 11

State v. Gillian, 360 S.C. 433, 449, 602 S.E.2d 62 (Ct. App. 2004)..... 12

State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011) 12

State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013)..... 4

State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002) 13

State v. Stokes, 381 S.C. 390, 673 S.E.2d 434 (2009)..... 12

Statutes

S.C. Code Ann. § 16-3-50..... 13

Rules

Rule 608(c), SCRE 11

Rule 611(b), SCRE 11

Constitutional Provisions

U.S. Const. amend. VI 11, 12

STATEMENT OF ISSUE ON APPEAL

Whether the exclusion of a co-defendant's plea deal was error under the rules of evidence and the Confrontation Clause?

STATEMENT OF THE CASE

On May 9, 2012, a Richland County grand jury indicted Greg Isaac for murder, first-degree burglary, and attempted armed robbery. R. _____. On August 21, 2013, the South Carolina Supreme Court dismissed an interlocutory appeal by appellant in which he claimed he was immune from prosecution under sections 16-11-410 to -450 of the South Carolina Code. State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013). On September 30, 2013, appellant was tried before the Honorable Clifton Newman and a jury. Tr. 1. Luck Campbell, Nichole Simpson, John Steadman, and Meghan Walker represented the State. Tr. 1. Mark Schnee represented appellant. Tr. 1. The jury convicted appellant on all three counts. Tr. 608, l. 23 – 609, l. 11. Judge Newman sentenced appellant to life imprisonment for murder and concurrent terms of twenty years' imprisonment on the other charges. Tr. 622, ll. 11 – 14. This appeal follows.

STATEMENT OF FACTS

Duress and self-defense were the primary factual issues in this trial. It was undisputed that Appellant Greg Isaac ("Isaac") shot Antonio Corbitt ("Corbitt") and that Corbitt died from his wounds. Tr. 476, l. 14 – 477, l. 3. Isaac did not know Corbitt. Tr. 479, ll. 24 – 25. Isaac came to be at Corbitt's apartment complex because an associate of Isaac's, Tavares "Murder" World ("World"), believed that Corbitt shortchanged him in a drug deal. Tr. 480, ll. 4 – 5. Tr. 468, ll. 2 – 18. Tr. 467, ll. 20 – 23.

Isaac was afraid of World. Tr. 470, l. 24 – 471, l. 9. The first time Isaac ever met World, they got into an altercation. Tr. 464, ll. 17 – 24. Isaac was unable to avoid World because he married Isaac's cousin. Tr. 465, ll. 15 – 23. On another occasion, World cursed Isaac, pointed a gun at his face, and slapped him. Tr. 466, ll. 6 – 24. World later apologized and Isaac associated with World from time to time. Tr. 467, ll. 2 – 10.

On the evening of Corbitt's death, Isaac was with World and heard World talking about how he was angry because "he got played" on a drug deal involving marijuana. Tr. 467, ll. 20 – 23. Vernorris Dickson ("Dickson") picked up Isaac and World and they began driving. Tr. 467, l. 24 – 468, l. 8. Isaac did not "know what was going on until we got to the [destination]." Tr. 468, ll. 2 – 8.

When they got the apartment complex, World told Isaac to come with him to Corbitt's apartment. Tr. 468, ll. 11 – 18. Isaac told World he had nothing to do with his problems with Corbitt. Tr. 468, ll. 11 – 19. Isaac described what happened next: "He pulled a gun out on me. He pulled a gun out on me and said come on, stop acting like a bitch – you need a gun." Tr. 468, ll. 19 – 25. World pointed the gun in Isaac's face. Tr. 469, ll. 4 – 7. Isaac believed that World would kill him if he did not follow him. Tr. 469, ll. 8 – 12.

Isaac took the gun from World and World pulled out another gun. Tr. 468, l. 19 – 470, l. 9. They went to Corbitt's apartment, but he was not at home. Tr. 469, l. 24 – 470, l. 4. They went back to the car and as they were about to leave, Corbitt drove into the apartment complex. Tr. 470, ll. 10 – 23. World again threatened Isaac and forced him to accompany him to Corbitt's apartment. Tr. 470, l. 15 – 471, l. 9. Isaac said that if he did not accompany World, "He would have killed me or he would did something wrong to me." Tr. 471, ll. 2 – 9.

World beat on Corbitt's door and when there was no answer, World kicked in the door. Tr. 471, ll. 13 – 21. World demanded his money. Tr. 471, ll. 13 – 21. World went into the apartment and he and Corbitt began fighting. Tr. 472, l. 12 – 473, l. 7. Isaac was still outside the apartment. Tr. 473, ll. 10 – 11. He entered the apartment to try to stop the fight. Tr. 473, ll. 12 – 15. World ran past Isaac out of the apartment. Tr. 474, ll. 17 – 24. World pushed Isaac's shoulder as he ran. Tr. 474, ll. 17 – 24. Isaac stated, "before I could react, my reaction time was so fast, [Corbitt] was already in the door like (indicating) like he was reaching for a gun." Tr. 474, ll. 17 – 24. Isaac pulled his gun, fired twice, and ran. Tr. 476, l. 14 – 477, l. 9. Isaac did not even know whether the shots hit Corbitt. Tr. 477, ll. 4 – 5. When he got back into the car, World threatened to harm Isaac's family if he ever told what happened. Tr. 477, ll. 14 – 24. World took the gun back from Isaac. Tr. 477, ll. 14 – 18.

During cross-examination, the State impeached Isaac's credibility with his previous statements. Tr. 480, l. 11 – 524, l. 11. Isaac initially denied the incident to the police. Tr. 517, ll. 12 – 20. The solicitor also confronted Isaac with a written statement that the State

claimed omitted World's coercion. Tr. 481, l. 4 – 487, l. 4. This placed Isaac's credibility in question with the jury.

World did not testify. Dickson, the driver, testified for the State. Dickson admitted that World and Isaac "had some problems at the beginning" but stated that they later "became good friends." Tr. 301, ll. 1 – 8. World and Dickson sold marijuana together. Tr. 298, ll. 15 – 17. They bought marijuana from Corbitt. Tr. 299, ll. 10 – 16. Isaac was not involved in World, Dickson, and Corbitt's drug business. Tr. 301, ll. 9 – 11.

Dickson's account of the evening omitted World's threats to Isaac. Tr. 302, l. 1 – 303, l. 21. Dickson stated no words were exchanged other than World asking Isaac to come with him and Isaac following. Tr. 303, ll. 12 – 21. He testified that neither he nor World ever forced Isaac to be part of their group. Tr. 311, ll. 8 – 14. Dickson claimed World and Isaac came running back to the car. Tr. 304, ll. 16 – 22. After they got into the car, World asked Isaac why he shot Corbitt and the two men argued. Tr. 305, ll. 1 – 4. Dickson heard Isaac say that he had fired at Corbitt because Corbitt "was going to shoot him." Tr. 305, ll. 11 – 13. He later heard Isaac say that Isaac thought Corbitt was reaching for a gun. Tr. 312, ll. 11 – 14. Dickson also admitted that Isaac told World not to talk about the incident. Tr. 306, ll. 8 – 9. Dickson claimed that Isaac and World remained friends after the shooting. Tr. 307, ll. 5 – 20.

At the time of his testimony, Dickson was charged with murder, armed robbery, conspiracy, and first-degree burglary. Tr. 309, ll. 12 – 14. The State asked Dickson about the penalties for these crimes and he testified that murder had a mandatory minimum sentence of thirty years a maximum sentence of life imprisonment. Tr. 309, ll. 12 – 22. Dickson testified that he had made no deals with the Solicitor's office and had not been

promised anything in exchange for his testimony, but that he hoped “for a deal down the road.” Tr. 310, ll. 13 – 23.

On cross-examination, defense counsel asked him about the mandatory minimum of a thirty year murder sentence and that Dickson would be 67 years old before he could get out of prison. Tr. 313, ll. 15 – 23. The following then occurred:

Q. So in order for you to get leniency on that charge at all, the solicitor would have to make you a deal and reduce the charge?

A. We didn't talk about no deal.

Q. You want a deal, though?

A. If the judge grant me leniency.

Q. Okay. Well, do you want a deal similar to what Travares World got?

A. I know don't what deal he got.

Tr. 314, ll. 5 – 13 (errors in original). The State objected stating they had a matter of law.

Tr. 314, ll. 14 – 15. Defense counsel replied, “It's a matter of public record, Judge.” Tr. 314, ll. 16 – 17. Judge Newman excused the jury and heard argument on the State's objection. Tr. 314, ll. 18 – 25.

The State argued that the sentence a co-defendant receives is inadmissible. Tr. 315, l. 2 – 316, l. 1. The State reduced World's charge from murder to voluntary manslaughter. Tr. 315, ll. 18 – 19. Judge Newman sentenced World on the voluntary manslaughter plea. Tr. 619, ll. 2 – 18. The solicitor stated, “I don't understand under what theory [trial counsel] thinks he's allowed to cross-examine on this issue **any witness. What a co-defendant or other person got is not admissible in front of this jury, just like what the defendant is going to get is not admissible in front of this jury.**” Tr. 315, l. 21 – 316, l. 1 (emphasis added).

Trial counsel responded that he was “simply following up on what the solicitor asked” when the trial judge interrupted him and asked trial counsel “what law supports” his questioning. Tr. 316, ll. 10 – 13. Trial counsel replied, “The law of fully cross-examining this witness.” Tr. 316, ll. 14 – 15. The trial judge then sustained the objection. Tr. 316, ll. 16 – 20. Trial counsel then asked, “What is the actual argument in terms of the legal issue or legal problem with me asking what type of deal this witness would like? That’s where, I guess, I’m confused, Your Honor.” Tr. 316, ll. 21 – 24. The court stated that he could not “clear up any confusion” regarding the objection and then stated, “I sustained the objection that you have no authority for the proposition that you can cross-examine this witness based on the sentence of a co-defendant, that’s the State’s objection.” Tr. 317, ll. 5 – 8. The court further stated, “And that objection is sustained since you have no authority to support your position other than the law of cross-examination, I think, is what you just said.” Tr. 317, ll. 10 – 13.

Trial counsel replied, “It’s a basic rule of evidence, Your Honor, yes, and basic Sixth [A]mendment to fully confront my client’s accusers.” Tr. 317, ll. 14 – 16. The trial judge replied, “Okay. The objection is sustained.” Tr. 317, l. 17. When the jury returned, trial counsel elicited from Dickson that he was represented by Barney Geise, but Dickson denied talking with him about the type of deal that would be available. Tr. 318, ll. 3 – 14.

The State’s last witness was its lead investigator, David Wilson (“Wilson”). During cross-examination, trial counsel asked Wilson, “Were you present in court approximately three months ago when [World] pled guilty to these charges?” Tr. 434, ll. 8 – 9. The State immediately objected and Judge Newman excused the jury. Tr. 434, ll. 10 – 17. The State argued again that deals made with co-defendants had nothing to do with the Isaac’s guilt.

Tr. 435, ll. 2 – 7. Trial counsel replied that he was going to ask “what charges Mr. World pled guilty to.” Tr. 435, l. 14 – 436, l. 1. Trial counsel offered to stay away from “deals.” Tr. 435, l. 14 – 436, l. 1. The trial judge sustained the objection stating that the deal received by World would only be appropriate cross-examination of World, not of other witnesses. Tr. 436, ll. 2 – 9. The trial judge specifically instructed defense counsel not to ask the witness “what charges Mr. World pled guilty to.” Tr. 436, ll. 7 – 9.

ARGUMENT

The exclusion of a co-defendant's plea deal was error under the rules of evidence and the Confrontation Clause.

Appellant should have been able to impeach Dickson's testimony that he had made no deals with the State. Appellant also should have been able to show that Dickson had a significant incentive to lie about whether World coerced Isaac with evidence of the reduction of World's charge from murder to manslaughter. "A witness may be cross-examined on any matter relevant to any issue in the case, including credibility." Rule 611(b), SCRE. "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c), SCRE. "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI.

Despite these basic rules of evidence, the State made the blanket and conclusory statement that such evidence was generally inadmissible. Objections must be made with sufficient specificity to inform the court of the point urged by the objector. State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). Defense counsel expressed disbelief and asked for the State's "actual argument in terms of the legal issue or legal problem with me asking what type of deal this witness would like." Tr. 316, ll. 21 – 24. The trial judge refused to press the solicitor for any authority, but instead shifted the burden of articulating admissibility to the defense. Tr. 315, l. 21 – 317, l. 16. Even after trial counsel argued that it was a "basic rule of evidence" and cited the Confrontation Clause, the court still sustained the State's objection. Tr. 317, ll. 14 – 18.

The Sixth Amendment guarantees the right to fully cross-examine adverse witnesses. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004). The right to confront and cross-examine witnesses are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973). The right of cross-examination is implicit in the constitutional right of confrontation. Id. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination. State v. Gillian, supra. The primary interest secured by the Confrontation Clause of the Sixth Amendment is the right to cross-examination. State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011); State v. Stokes, 381 S.C. 390, 400-01, 673 S.E.2d 434, 439 (2009).

It cannot be disputed that Dickson's pending charges and motive to testify favorably for the State to obtain a better deal were valid grounds for impeachment. Giglio v. United States, 405 U.S. 150, 153-55 (1972). In Giglio, the prosecutors failed to disclose a promise not to prosecute the key witness against the defendant. The Court found that the government's case "depended almost entirely" on the witness's testimony. Id. at 154. His "credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it." Id. at 154-55.

Just as in Giglio, Dickson's testimony and credibility were crucial to the State to disprove duress and coercion. The State made a point during direct-examination of explaining the mandatory minimum sentences Dickson was facing. Tr. 309, l. 12 – 310, l. 10. This left the jury with the impression that Dickson was facing a mandatory minimum sentence of thirty years for murder. Tr. 309, ll. 15 – 22. It was fair ground to then impeach Dickson and correct this impression with the fact that World pled guilty not

to murder, but voluntary manslaughter, which carries a mandatory minimum sentence of only two years, a twenty-eight year difference. See S.C. Code Ann. § 16-3-50 (“A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years.”).

Exclusion of such evidence is reversible error. State v. Mizzell, 349 S.C. 326, 332-33, 563 S.E.2d 315, 318 (2002). In Mizzell, the trial judge prohibited the defendant from questioning a witness about their possible sentence. Id. The Court held this prohibition was error, violated the Confrontation Clause, and was critical to showing bias. Id. Mizzell rejected the blanket statement that the State made that evidence of sentences is inadmissible, stating that the Confrontation Clause trumps the concern that the jury might learn of the defendant’s potential sentences. Id. Furthermore, just like Dickson, the absence of a deal on the witness’s pending charges in Mizzell was held even more prejudicial impeachment evidence because it “suggests the witness will testify more favorably to the State’s position.” Id. at 332, 563 S.E.2d at 318.

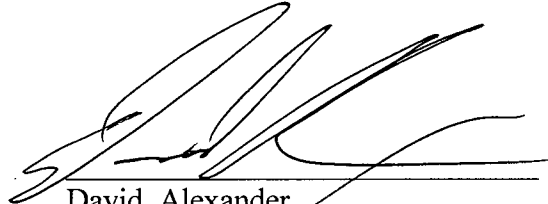
In State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991), similar reasoning applied to the trial court’s refusal to allow cross-examination of a witness who could avoid a mandatory minimum if a charge was dropped. In Brown, the witness testified that she was originally charged with cocaine trafficking, but pled guilty to conspiracy. Id. at 171, 399 S.E.2d at 594. The defendant attempted to cross-examine about the mandatory minimum sentence the witness avoided by pleading guilty to the lesser charge, but was prevented from doing so by the court. Id. The Court held this prohibition violated the Confrontation Clause and the defendant’s ability to show bias. Id.

Just as in Brown, Dickson could avoid murder's mandatory minimum sentence of thirty years if he were allowed to plead guilty to voluntary manslaughter like his co-defendant, World. It would also be reasonable to believe that Dickson would receive an even more favorable sentence than World since Dickson only stayed in the car and actually testified for the State when World did not. Finally, it would also impeach Dickson's credibility that he was represented by an attorney (who was sitting in the audience) but had no idea of the sentence received by his more culpable co-defendant. Since Rule 608(c) allows evidence of bias or credibility not only on cross-examination of the witness himself, it was also error to prevent similar questions to Officer Wilson. Since the credibility of Dickson as opposed to Isaac was the key factual issue at trial, this constitutional error requires reversal of appellant's convictions.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of September, 2014.