THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

State of South Carolina,

Respondent,

v.

Richard Lanard Sprinkle,

Appellant.

PETITION FOR REHEARING

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ARGUMENT FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the appellant, Richard Lanard Sprinkle, petitions this Court for a rehearing of the Opinion issued on December 23, 2014, affirming the convictions of Richard Sprinkle. Sprinkle submits that the Court misapprehended the law and overlooked the evidence when it held that it was harmless error for the Circuit Court to limit Sprinkle's ability to fully cross-examine the State's star witness, Sean Echols, with regard to plea discussions Echols had with the State. The Court agreed that the limitation was error, but held that the error was harmless. Sprinkle respectfully asks the Court to reconsider its decision.

The Court should reconsider its decision because the error was not harmless beyond a reasonable doubt. Although a violation of the Confrontation Clause of the Sixth Amendment is not *per se* reversible error, where an error has occurred, reversal can only be avoided where "the error is harmless *beyond a reasonable doubt*." State v. Graham, 314 S.C. 383, 386, 444 S.E.2d 525, 527 (1994) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)) (emphasis added). In Van Arsdall, the United States Supreme Court set forth a list of criteria to be used to determine whether or not error is harmless beyond a reasonable doubt:

> Whether such an error is harmless in a particular case depends upon a host of factors.... The factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

475 U.S. at 684. In State v. Graham, the South Carolina Supreme Court cited the Van Arsdall factors approvingly, while stating that "[t]he list of factors . . . is not exhaustive." Graham, 314 S.C. at 386, 444 S.E.2d at 527.

Here, the Court did not consider all these factors and overlooked the importance of Echols's testimony when determining that the limitation on cross examination was harmless error. Echols's testimony was vital to the State's case. Without Echols' testimony, the State had *no evidence* that Sprinkle helped plan the crimes and therefore *no evidence* to show Sprinkle's intent. (R. pp. 206-07; 212.) Additionally, the State had *no evidence* that Sprinkle assaulted Rumph. (R. p. 209, lines 20-21.) Rumph himself was never able to identify Sprinkle. (R. pp. 142; 180; 336.) Moreover, no physical evidence was presented at trial tying Sprinkle to the crimes. The State needed Echols's testimony to make the case against Sprinkle. Given the critical nature of the testimony, any limitation on Echols's testimony—particularly a limitation that would show bias—could not have been harmless beyond a reasonable doubt.

In addition, the Court improperly placed the burden on Sprinkle to show the error was reversible. The State has the burden to demonstrate that the error was harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18, 23-24 (1966) (holding that there was no difference between previous precedent and "requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," a standard established in the case). See also, e.g., State v. Alvarez-Lopez, 98 P.3d 699, 708 (N.M. 2004) ("Under federal law, the burden is on the State to establish that the constitutional error in this case was harmless beyond a reasonable doubt.") (citing Brecht v. Abrahamson, 507 U.S. 619, 630 (1993)); Com v. Vardinski, 780 N.E.2d 1278, 1287 (Mass. 2003) ("Where a defendant's constitutional right to cross-examination has been denied, the prosecution bears the burden of establishing that the error was harmless" and a court must "resolve all ambiguities and doubts in favor of the defendant"); Dionas v. State, 80 A.3d 1058, 1065 (Md. 2013) ("once error [in not allowing certain cross-examination] is established, the

burden falls upon the State, the beneficiary of the error, to exclude this possibility beyond a reasonable doubt"). Here, the Court improperly placed the burden on Sprinkle by stating that "[i]f the defendant establishes he was unfairly prejudiced by the limitation [on cross-examination], it is reversible error." State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. Filed Dec. 23, 2014) (quoting State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)).

Moreover, the State failed to meet its burden of showing that the error was harmless beyond a reasonable doubt. In Dionas v. State, the Maryland's highest court held that "where credibility is an issue and, thus, the jury's assessment of who is telling the truth is critical, an error affecting the jury's ability to assess a witness' credibility is not harmless error because "the right to cross-examine effectively necessarily includes the right to place the testimony of a witness in its proper setting to fairly enable the jury to judge its credibility." Dionas, 80 at 1066 (citations omitted). Id. The Dionas court noted a previous decision where it had determined that "[a]lthough the jury had ample evidence to convict [the defendant], we cannot say beyond a reasonable doubt that the court's error [in not allowing effective cross-examination] could not have influenced the jury" because "[t]he proffered cross-examination, if successful, could have cast sufficient doubt on the prosecuting witness' credibility to render her unworthy of belief in the mind of at least one juror." Id. Thus, any cross-examination which could *potentially* affect a juror is not harmless, even where there is strong evidence against a defendant.[1] See also State v. Alvarez-Lopez, 98 P.3d 699 (N.M. 2004) (determination of guilt or innocence is for the jury and error cannot be harmless unless the jury's verdict is "surely unattributable to the error . . . no matter how inescapable the findings to support that verdict might be") (quoting Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)); Clark v. O'Leary, 852 F.2d 999 (7th Cir. 1988)

[1] As discussed above, the evidence against Sprinkle was not strong. The evidence came almost exclusively from Echols.

(examining the Van Arsdall factors and determining that where the state's case was built on witness testimony to place defendant at the scene of the crime, failure to allow cross-examination of witnesses on gang affiliation that may result in bias was not harmless error).

Courts in other jurisdictions have directly examined the harm to a defendant where a trial court prohibits cross-examination of a witness for the State regarding plea negotiations. In one case, the trial court prohibited the defendant from cross-examining a key witness of the state about unsuccessful plea negotiations with the State, including a revoked proffer of a maximum sentence and discussions about his eligibility for probation.[2] Cruz v. State, 437 So.2d 692, 695 (Fla. Ct. App. 1983), *disapproved on other grounds by* Edwards v. State, 548 So.2d 656 (Fla. 1989). Although the trial court did not allow the defendant to cross-examine the witness about these plea negotiations, the defendant was able to elicit on cross examination that the witness expected leniency in exchange for his testimony. Id. The appellate court held that the exclusion of the evidence of plea negotiations was reversible error.

In holding that the limitation on cross was reversible error, the court noted that "the defense's right to question a witness as to what representations were made to him is not dependent on whether they were approved by the court; the inquiries are germane to developing the witness's interest or bias in testifying." Id. at 697 (citing United States v. Benavides, 549 F.2d 392, 394 (5th Cir. 1977). The court went on to hold that because the witness was a key witness for the State, "[i]t would be problematic to say with certainty whether the state's conviction of the appellant could have been effected without the key testimony of [the] witness." Cruz, 548 So.2d at 697. Instead, "[g]iven the crucial nature of [the witness]'s testimony, the defense should have been permitted to make a more thorough examination of two vital areas

[2] The witness was convicted in a separate trial just prior to the defendant's trial and was awaiting sentencing. Cruz, 437 So.2d at 694.

bearing on the witness's credibility . . . [including] his interest or bias, if any, in testifying against the appellant." This required the court to allow the defense to conduct "[a] comprehensive exploration of . . . questions relevant to plea negotiations which occurred both before and after [the witness]'s trial."

Other courts examining similar issues have reached the same result. See, e.g., Fannin v. State, 581 So.2d 974 (Fla. Ct. App. 1991) (holding it was reversible error to prevent cross-examination of a witness regarding her knowledge or belief of the possibility of a plea deal for her mother on a separate charge, as such information could suggest interest or bias on the part of witness which could "shade her testimony to protect her mother"); State v. Clark, 364 S.W.3d 540 (Mo. 2012) (holding it was reversible error to prohibit cross-examination of witness regarding his hopes for leniency even where plea deal had not been offered); Keys v. State, 739 So.2d 455 (Miss. Ct. App. 1999) (holding it was reversible error for the trial court to prevent cross-examination of a witness using a statement made by that witness at plea hearing where plea had ultimately been withdrawn).

The same question of bias was present in the case at hand, and the failure to allow Sprinkle to expose Echols's bias was reversible error. Although the original plea deal that the State offered Echols had expired, there is nothing in the record to suggest that the possibility of deal in the future had been foreclosed. In fact, *in camera* discussion with the trial court indicate that Echols had allowed the plea deal to expire because "he could be facing life, he was offered 20 [years] and he's looking for ten [years]." (R. p. 237, ll. 17-20.) The trial court itself indicated in its ruling that "we're not going to get into" discussions "[w]ith regard to Mr. Echols asking, you know, for ten years." (R. p. 240 line 24 – p. 241 line 2.)

Further, Echols testified that he was testifying out of the goodness of his heart and that he had not been offered anything for his testimony. (R. p. 212, lines 18-22.) This testimony is important because it left the jury with the impression that there had been *no plea discussions* between the State and Echols, which was not true. In addition, it allowed the State to portray Echols as a repentant criminal who was hoping simply for "*the Court* to have mercy on [him]." (R. p. 212, lines 23-25) (emphasis added). Had Sprinkle been able to expose the plea discussions with the State, the jury would have seen that Echols was not only not credible, but he actually had reason to testify *against* Sprinkle. Moreover, Echols testified that he was not indicted for burglary, presumably because he was cooperating with the State, and yet the jury was not permitted to hear testimony that would have led them to conclude that Echols was cooperating with the State. Given these facts, it cannot be said with certainty that the testimony would not have affected the jury's decision.

Finally, the Court's reliance on State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991), is misplaced because the facts in that case were vastly different than the facts in the present case. To begin, the court in Sherard did not find that the limitation on cross was error. The defense was able to elicit testimony that the State's witness had previously served time and "the last thing in the world he wanted to do was go back"; that the State's witnesses both knew that they "would be treated much less severely in family Court than in General Sessions Court"; that the State had agreed to reduce numerous penalties against them in exchange for their testimony; and that one witness knew that "in order to remain in Family Court and have the charges against him reduced, he had to testify for the State." Id. at 174-75, 399 S.E.2d at 596. This testimony is much more extensive and much more indicative of bias than the testimony elicited in the present case.

Further, in Sherard the conviction was supported not only by the State's witnesses but also by the defendant's *own statements to the police*, which "indicate that he shot [the victim] while attempting to rob him." Id. at 175, 399 S.E.2d at 596. Here, there is no other evidence supporting Sprinkle's conviction for burglary, other than Echols's testimony. Sprinkle has maintained through the case that he did not go to the victims' house to rob them or to commit a crime. That was Echols's idea, and Echols was permitted to point the finger at Sprinkle without Sprinkle being able to full cross examine him. Accordingly, the Court erred in relying on Sherard to hold that the trial court's error was harmless beyond a reasonable doubt.

CONCLUSION

Sprinkle respectfully asks the Court to reconsider its decision in this case. The limitation on cross examination was not harmless beyond a reasonable doubt. The jury should have heard about the plea deal and been able to draw its own conclusions as to why Echols testified the way he did and why it was Sprinkle and not Echols who was charged with burglary. It cannot be said with certainty that had the jury known that Echols had been in plea negotiations with the State that it would not have affected the outcome. A defendant should not have to serve 35 years in prison based on such flimsy and limited evidence.

For these reasons, the appellant respectfully requests that the Court grant the Petition for Rehearing and reverse and remand for a new trial.

By: _____

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January 6, 2015

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Edgar W. Dickson, Circuit Court Judge

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V.

RICHARD LANARD SPRINKLE, APPELLANT

APPELLATE CASE NO. 2013-000784

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of January, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 6th day of January, 2015.

Beverly Robinson Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.