THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. Filed Dec. 23, 2014)

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

v.

Richard Lanard Sprinkle,.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Tina Cundari, S.C. Bar No. 71951
Alexander E. Davis, S.C. Bar No. 100061
SOWELL GRAY STEPP & LAFFITTE LLC
1310 Gadsden Street
Columbia, South Carolina 29201
(803) 929-1400
tcundari@sowellgray.com
adavis@sowellgray.com

Robert M. Dudek
Chief Appellate Defender
S.C. COMMISSION ON INDIGENT DEFENSE
1330 Lady Street, Ste. 401
Columbia, South Carolina 29201
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Petitioner

INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 8, 2015. (App. 486-87.)

QUESTION PRESENTED

1. Did the Court of Appeals err in holding that the violation of the defendant's Sixth Amendment right to fully cross-examine the State's star witness and a co-perpetrator of the crime about plea negotiations he had with the State was harmless beyond a reasonable doubt?

STATEMENT OF THE CASE

This is an appeal from a verdict finding Richard Lanard Sprinkle guilty of one count of burglary, two counts of armed robbery, and one count of assault and battery in the first degree. (R. pp. 331-333.) Sprinkle was sentenced to 35 years in prison for burglary, 30 years for the two counts of armed robbery, and 10 years for assault and battery in the first degree. (R. p. 330; pp. 346-349.)

Sprinkle was arrested on June 29, 2011, and indicted on October 1, 2012, for two counts of armed robbery, two counts of attempted murder, and burglary in the first degree. (R. p. 5; pp. 350-360.) On January 30, 2013, Sprinkle was indicted for first degree burglary. (R. p. 359.)

The case was tried before a jury in Orangeburg County on April 9 and 10, 2013, nearly two years after Sprinkle was arrested. The jury found Sprinkle guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery. (R. pp. 331-333.) The jury found Sprinkle not guilty as to attempted murder and not guilty as to assault and battery of James Wright.

Sprinkle appealed, and the Court of Appeals affirmed Sprinkle's conviction in an unpublished opinion. (App. pp. 467-75.) Although the conviction was affirmed, the court of appeals found that the trial court erred in failing to allow Sprinkle to cross-examine Echols about Echols's plea negotiations with the State, but concluded that the error was harmless. (App. pp. 470-72.)

Sprinkle filed a petition for rehearing, arguing that the Court of Appeals erred in holding that the violation of his Sixth Amendment right was harmless beyond a reasonable doubt. (App.

pp. 476-85.) The Court of Appeals denied the petition for rehearing by order dated January 8, 2015. (App. pp. 486-87.) Sprinkle now petitions this Court for a writ of certiorari.

FACTS

This case involves a crime that occurred in a gambling house in Orangeburg on the early morning hours of June 26, 2011. The victims were James Wright and Robert Rumph. Wright and Rumph lived together. (R. p. 106, lines 20-24.) Rumph makes his money playing cards and gambling. (R. p. 153, lines 19-20.) On the night of the crime, there had been a card game at the house. (R. pp. 154-155.) Wright, who is 74 years old, drank a "half of a half a pint" of liquor.[1] (R. p. 115, lines 20-21; p. 130, lines 5-18.)

According to Wright, he and Rumph were sleeping when there was a knock at the door. The person asked if "Uncle Rocky," meaning Rumph, was home. (R. p. 107, lines 11-12; p. 117; p. 119, lines 12-18.) The person said he wanted to use the phone. (R. p. 107, lines 11-12). Wright testified that he went to the back bedroom to tell Rumph that someone was at the door asking for him. Rumph said to let them in. (R. p. 119, lines 13-14.) Wright opened the door and the men came inside. It was dark inside and Wright did not turn on the lights. (R. p. 16, lines 16-19; p. 22, lines 2-4; p. 130, lines 19-22.) Once inside, one of the men immediately hit Wright on the head with a pistol and demanded money. (R. p. 109, line 25 – p. 110, line 8; p. 119, lines 18-24.)

The other man went to Rumph's room. Rumph testified that a "black guy with long dreads on his hair" came into his room and demanded money. (R. p. 137; p. 143, line 7.) Rumph testified that his bedroom light and TV were on. (R. p. 148, lines 15-17.) When Rumph did not immediately give the man money, the man cut Rumph with a knife. (R. p. 138.)

---

[1] In the pre-trial hearing, Wright testified that he draft "about a half a pint." (R. p. 16, lines 4-7.)

Rumph testified that Wright and the other man eventually came into his bedroom. Rumph recognized the other man as Sean Echols, Vivian's son. Vivian was a woman whom Rumph "socialized" with. (R. p. 139; p. 145.) Vivian knew that Rumph kept a lot of money in the house, and Rumph had loaned money to Echols in the past. (R. p. 139; pp. 145-146.) Vivian had called the house twice that evening. (R. p. 151, lines 17-22.) The second time she called, she asked if she could come over. Rumph said no, that he was in bed. (R. p. 155, lines 19-20.) Rumph testified that a little over $1000 was stolen. (R. p. 153, lines 11-12.) Rumph also testified that his car, a pair of pants, and a hat were taken. (R. p. 140; p. 143.)

Shortly after the men left, the police arrived. Wright said that the man who hit him was "dark skinned" and had dreadlocks. (R. p. 128.) The police showed Wright three or four different photo lineups on three different days. (R. p. 113, line 24 - p. 114, line 1; p. 133, lines 1-7.) After Wright told the police that he thought the man's name was Ricky, the police created a photo lineup with a photo of Richard Sprinkle, and Wright ultimately identified Sprinkle as one of the perpetrators. (R. pp. 38-40; p. 334.) Wright also identified Echols as the other perpetrator. (R. pp. 113-114; p. 335.)

Rumph, on the other hand, was *never able to identify Sprinkle* in a line-up or in court, despite being in close proximity with his assailant for a considerable period of time in a well-lit room. (R. p. 142, 180, 336.) Rumph was, however, able to identify Echols as one of the perpetrators. (R. p. 142; p. 336.)

Sprinkle was arrested on June 29, 2011, three days after the crime. In January 2013, Sprinkle met with the police and told them that he was present at the scene of the crime, but that when he saw Echols assaulting someone, he got scared and ran out of the house. (R. p. 187; p. 190; p. 193; p. 197.) He said that he was on drugs and that is why he went to the house.

(R. p. 190, lines 21-23.) He never said that he had a weapon and he never said that he hit anyone. (R. p. 194, lines 1-4.) He also testified that Echols's mom, Vivian was there. (R. p. 197, lines 18-21.) He said that he was afraid of Echols. (R. p. 192, lines 23-25.) Echols had been threatening him and he wanted to be moved from Orangeburg Detention Center. (R. p. 197, line 24 – p. 198, line 4.)

ARGUMENT

The Court of Appeals erred in holding that the violation of the defendant's Sixth Amendment right to fully cross-examine witnesses against him was harmless beyond a reasonable doubt.

The Court of Appeals erred in finding that the violation of Sprinkle's Sixth Amendment right to fully cross-examine witnesses against him was harmless beyond a reasonable doubt. The error could not have been harmless beyond a reasonable doubt because the witness whose testimony was limited was a co-perpetrator of the crime and was the only witness who provided evidence to support the conviction of burglary. Had Sprinkle been able to fully cross-examine the witness, Sprinkle would have exposed the plea negotiations that the witness had with the State, exposed the witness's bias to testify favorably for the State, and exposed the fact that the State had no other evidence to support a conviction of burglary against Sprinkle.

This case raises the important question of whether a limitation on cross examination in violation of a defendant's Sixth Amendment's right can be harmless error when the witness who testified against the defendant provided the only evidence to support the conviction carrying the heftiest sentence.

The Sixth Amendment ensure a defendant the right to answer charges "through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527

(1994).[2] A criminal defendant has the right under the Confrontation Clause to cross-examine a witness against him with regard to bias. State v. Mizell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). A defendant's rights under the Confrontation Clause are violated where the he is "prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors [] could appropriately draw inferences relating to the reliability of the witness.'" Id. at 331, 563 S.E.2d at 317 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986)).

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*." Graham, 314 S.C. at 386, 444 S.E.2d at 527 (quoting Van Arsdall, 475 U.S. at 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 Graham, this Court cited the Van Arsdall factors approvingly, while also noting that "[t]he list of factors . . . is not exhaustive." Graham, 314 S.C. at 386, 444 S.E.2d at 527.

---

[2] These Sixth Amendment protections are extended to state defendants through the Due Process Clause of the Fourteenth Amendment. E.g., Duncan v. State of La., 391 U.S. 145, 148 (1968).

In this case, the Court of Appeals 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 to commit a crime. (R. pp. 206-07; 212.) 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 of Appeals improperly placed the burden on Sprinkle to show the error was reversible. The Court of Appeals stated that "[i]f *the defendant* establishes he was unfairly prejudiced by the limitation [on cross-examination], it is reversible error." (App. p. 471) (emphasis added) (quoting State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)). But it is *the State* that 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").

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.[3] 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) (examining the Van Arsdall factors and determining that where the state's case was built on

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

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.[4] 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 bearing on the witness's credibility . . . [including] his interest or bias, if any, in testifying against

[4] 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.

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 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* discussions with the trial judge 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.) In ruling, the trial judge stated, "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.

The Court of Appeals improperly relied on State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991), in the harmless error analysis 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.

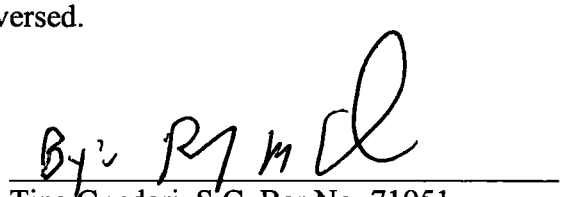
Further, in Sherard the conviction was supported not only by the State's witnesses but also by the defendant's *own statements to the police*, which "indicate that he shot [the victim]

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 throughout 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

The petition for writ of certiorari should be granted in this case. The limitation on cross examination violated Sprinkle's constitutional rights and 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 this case be reviewed and that the Court of Appeals' decision be reversed.



Tina Cundari, S.C. Bar No. 71951
Alexander E. Davis, S.C. Bar No. 100061
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
(803) 929-1400
tcundari@sowellgray.com
adavis@sowellgray.com

and

Robert M. Dudek
Chief Appellate Defender
S.C. Commission on Indigent Defense
1330 Lady Street, Ste. 401
Columbia, South Carolina 29201
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Petitioner

Columbia, South Carolina

February 9, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. filed 12/23/2014)
11-GS-38-1561-1563 & 2013-GS-38-0287

THE STATE,

RESPONDENT,

V.

RICHARD LANARD SPRINKLE,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on J. Benjamin Aplin, Esquire, and the S.C. Court of Appeals this 9th day of February, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of February, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022