ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

RECEIVED
JUN 19 2015
S.C. Supreme Court

RESPONDENT,

V.

CHRISTOPHER RYAN WHITEHEAD,

PETITIONER

APPELLATE CASE NO. 2012-213683

Appeal from Kershaw County

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 2012-UP-526

PETITION FOR REHEARING

On June 10, 2015, this Court affirmed as modified the conviction of Petitioner Christopher Ryan Whitehead for murder and first-degree burglary for which he received a sentence of life without parole. This Court ruled that while the admission of the codefendants' statements violated the Confrontation Clause pursuant to Bruton v. United States, 391 U.S. 123 (1968), this error was harmless in light of the overwhelming evidence of guilt. This petition for rehearing is submitted in opposition to the harmless error ruling.

This Court issued an unpublished opinion in Whitehead's case, State v. Whitehead, Op. No. 2015-MO-033 (filed June 10, 2015) citing the reasons for the decision as set forth in the case of

Whitehead's co-defendant, State v. McDonald, 412 S.C. 133, 771 S.E.2d 840 (2015). In State v. McDonald, id., this Court held that the Court of appeals erred in finding that the admission of the third co-defendant, [Cannon's], redacted confession did not violate McDonald's Confrontation Clause rights. This Court relied on the case of Schneble v. Florida, 405 U.S. 427 (1972) which held that the mere finding of the [Confrontation Clause] in the course of the trial, however, did not automatically require reversal of the ensuing criminal conviction.

This Court then held that given the extensive evidence of guilt in McDonald's case where he also gave a statement confessing, the Bruton[1] violation was harmless beyond a reasonable doubt. This Court again cited Schneble, *supra*, which found that a Bruton violation was harmless error when the details of petitioner's [confession] were internally consistent, were corroborated by objective evidence, and were not contradicted by any other evidence in the case.

Schneble does not apply to Christopher Whitehead's case because Whitehead did not confess and did not give a statement.

In Schneble, id., the defendant Schneble gave a detailed confession of how he murdered the victim, and the location of the body. He initially admitted knowledge of the murder and claimed that his co-defendant, Snell, shot the victim while Schneble was away from the car. He then conceded that this first statement was false, and he gave the details of how he strangled the victim, Mrs. Collier. His co-defendant Snell gave a statement claiming that Schneble never left him alone in the car with the victim.

The United States Supreme Court found that the minds of the average jury would not have found that the State's case was any less persuasive if Snell's statement had been excluded. Therefore, the Court concluded that the error of admitting Snell's statement when he did not testify

---

[1] Bruton v. United States, 391 U.S. 123 (1968).

was harmless error. The Court wrote that without Schneble's confession and the resulting discovery of the body, the State's case against Schneble was virtually non-existent. The U. S. Supreme Court cited Chapman v. California, 386 U.S. 18 (1967) for the proposition that unless there was a reasonable possibility that the improperly admitted evidence contributed to the conviction, reversal was not required.

The Court in Schneble v. Florida, *supra*, cited the case of Harrington v. California, 395 U.S. 250 (1969). Harrington and three co-defendants were tried for murder. One co-defendant confessed and testified for the state implicating Harrington. The other two co-defendants gave statements which corroborated Harrington's presence at the scene. Harrington gave a statement admitting that he was at the scene of the crime but denied any complicity. The Supreme Court held that any violation of Bruton was harmless error.

Whitehead's case is distinguished from both Schneble and Harrington because Whitehead did not give a statement and did not confess. The only evidence placing Whitehead at the scene of this crime were the statements of the two co-defendants McDonald and Cannon. Therefore, it cannot be said that this error of admitting the confessions of McDonald and Cannon implicating Whitehead was harmless beyond a reasonable doubt. In Chapman v. California, *supra*, the United States Supreme Court held: Before a federal constitutional error can be held harmless, the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt.

This Court held that this error was harmless in view of the overwhelming evidence of guilt. However, the remaining evidence was not overwhelming. Whitehead's alleged statement to a co-worker that he wanted to go to victim's house and fight him was not indicative that he planned to murder the victim. The Sonic Restaurant employee identified Whitehead as driving a four door sedan with a loud muffler. A neighbor of the victim reported hearing a loud muffler sound.

However, the neighbor did not identify a four door sedan. Whitehead showing up at work with a limp is purely circumstantial as far as implicating him in the murder. Whitehead telling his manager that he had problems and was moving was not evidence of guilt for a young man. Under *Bruton* and its progeny, it goes without saying that the statements of Cannon and McDonald do not constitute evidence against Whitehead for the purpose of satisfying the State's burden of proof. This leaves only the testimony of the jailhouse snitch, who claimed that he had overheard a conversation in which the participants, one of whom he later identified by his voice as Whitehead, discussed Zoch's killing and "just bragging about how they were killers now." R. p. 1221 line 10- R. p. 1222 line 20; R. p. 1226 line 20- R. p. 1227 line 9. But this witness never testified that Whitehead had admitted any degree of involvement in the incident.

Officer Craven Harvey who worked at the Kershaw County Detention Center where the jailhouse snitch, Michael Jenkins, and Whitehead were housed, testified that both were in A Pod. R. p. 1254, line 15-25; R. p. 1257, line. 8 – 23. Officer Harvey also confirmed that A Pod had six cells which could house eighteen to twenty-four inmates. F Pod was right above A Pod and also had six cells which could house eighteen to twenty-four inmates. The vents between A Pod and F Pod were connected and the vents between the cells were connected. Voices could be heard between the vents. R. p. 1262, line 1 – R. p. 1264, line 18. Therefore, the voice heard by the inmate Jenkins could have been on of many.

Michael Jenkins was not a credible witness because the victim had been a friend of his. R. p. 1233, line 3 – R. p. 1234, line 12. But for the dubious testimony of this "snitch," a directed verdict would have been in order. This is not overwhelming evidence.

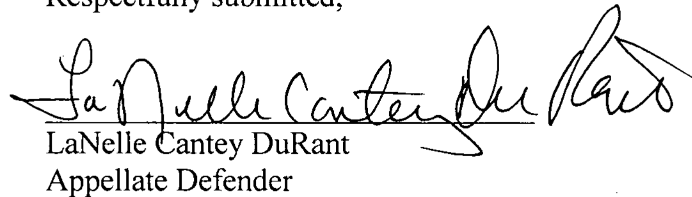
In his closing argument, the solicitor argued the veracity of the co-defendants' statements. He argued that the defense would try to take the jury's attentions away from the statement where the

co-defendant said he got a bat and hit him. R. p. 1329, lines 9 – 14. The solicitor asked where was Whitehead's confession? R. p. 1341, line 15. The solicitor said: "There's no question the three of them were together shortly after 10:00 or 10:20, undisputed. Now that's in the statement." R. p. 1344, lines 14 – 17.

This Court held that the admission of the statements of Whitehead's two co-defendants violated the Confrontation Clause. Therefore, this Court needs to apply the harmless error standard for federal constitutional error which is harmless beyond a reasonable doubt as stated in Chapman v. California, *supra.*

WHEREFORE, we respectfully request this Court to reconsider its ruling and grant Whitehead a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

This 23rd day of June, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

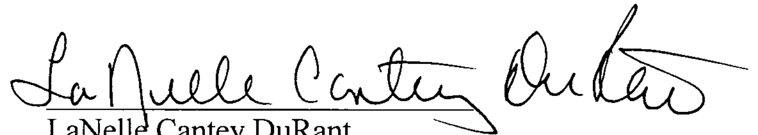
V.

CHRISTOPHER RYAN WHITEHEAD,

PETITIONER

CERTIFICATE OF SERVICE

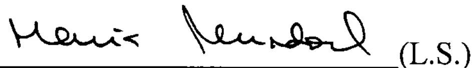
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Christopher Ryan Whitehead, #328345, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 23rd day of June, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 23rd day
of June, 2015.



_______________________(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.