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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 2015-UP-256 (S.C. Ct. App. filed 5/20/2015)

2012-GS-04-02002

THE STATE,

RESPONDENT,

V.

JOHN FITZGERALD KENNEDY,

PETITIONER

APPELLATE CASE NO. 2013-002621

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ROBERT M. PACHAK
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ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and was ruled on by the Court of Appeals on June 24, 2015.

QUESTION PRESENTED

Whether the Court of Appeals erred in ruling that the introduction of a “mug shot” was not reversible error?

STATEMENT OF THE CASE

Petitioner was convicted of murder after a jury trial held before the Honorable J. Cordell Maddox on December 2-5, 2013, in Anderson County. A thirty (30) year sentence was imposed. Andrew Potter, Esquire was trial counsel. Catherine T. Huey, Esquire was the assistant solicitor.

Petitioner appealed his conviction and submitted a final brief on November 20, 2014. Respondent submitted a final brief on December 8, 2014. The Court of Appeals affirmed the conviction on May 20, 2015. State v. Kennedy, Opinion No. 2015-UP-256. A petition for rehearing was denied on June 24, 2015.

This petition follows.

ARGUMENT

The Court of Appeals erred in ruling that the introduction of a “mug shot” was not reversible error.

Petitioner was tried for the murder of the victim by means of blunt force trauma. Detective Bearden got a lead on the identity of the suspect from Kimberly King who said she saw petitioner near the scene.¹ Detective Bearden prepared a photo lineup with petitioner in it. She explained that when she put together the display, she used a program called the “Mug Web” where you can put in a suspect’s name, and you can pick a picture out of a lineup if they have been arrested before. Then the program will pull up similar pictures. She then took the display to Ms. King and she picked out number four; which was petitioner. (R. p. 208, l. 23- R. 212, l. 2)

When the State sought to introduce the photo lineup, defense counsel objected. Outside the presence of the jury, he said it was clear the pictures were not from driver’s license photographs. They were all mug shots and petitioner was one of them. He said it was unduly prejudicial and under Rule 403, SCRE, prejudicial. The trial court thought the photos were from driver’s licenses. The assistant solicitor said they could have been, but they were from mug shots in this case. The trial court told defense counsel he was protected for the record, but he was going to admit. (R. p. 212, l. 19- R. 214, l. 12). A little later, defense counsel was allowed to put on the record that the testimony was that the detective took the photographs from booking photos. The evidence implied petitioner had been arrested before and had a prior record and was prejudicial. The trial court again said defense counsel was protected for the record, but it was admissible. (R. p. 222, l. 2-R. 223, l. 6).

¹ Petitioner lived in a camper behind the trailer the victim lived in.

After the State rested, defense counsel renewed his objection to the photo array. (R. p. 371, l. 8- 20). It put petitioner's character in issue and was prejudicial. The trial court said it wished the pictures were driver's license pictures, but again ruled against petitioner and said he was protected. (R. p. 374, l. 18- R. 375, l. 23).

Defense counsel objected to the introduction of the photo lineup because it was obvious after Detective Bearden's testimony that the photos were mug shots of people who had been arrested before. This was prejudicial. The Court of Appeals even cited State v. Traylor, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) for the proposition that the "introduction of a 'mug shot' of a defendant is reversible error." There was no demonstrable need to introduce the photo lineup because the witness already knew who petitioner was since she lived near him. The photograph shown to the jury did suggest that petitioner had a criminal record because Detective Bearden told the jury he did. Defense counsel also objected to Detective Bearden testimony in this regard and the trial court said he was protected for the record.

The defense in this case was that this case was based on "circumstance, assumptions, and speculation." (R. p. 137, l. 23- 25). The investigation was flawed. (R. p. 139, l. 7- 24). And someone else lived with the victim. (R. p. 140, l. 10- 15). Petitioner was not the one who committed the crime. The admission of mug shot evidence in this case was deliberate and prejudicial as it placed petitioner's character into issue with prior arrest. The wrongful admission of this evidence requires reversal as petitioner did not receive a fair trial.

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,

Robert M. Pachak

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Appellate Defender

ATTORNEY FOR PETITIONER.

This 17th day of July, 2015

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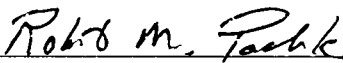
JOHN FITZGERALD KENNEDY,

PETITIONER

APPELLATE CASE NO. 2013-002621


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 Kaycie S. Timmons, Esquire, and the S.C. Court of Appeals this 17th day of July, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of July, 2015.


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