

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

JUL 27 2015

S.C. Supreme Court

NELSON H. CASTRO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000021

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
) **ORIGINAL**
)
-VS-) 2010-GS-26-0445
)
NELSON H. CASTRO,)
)
DEFENDANT.)

THE FOLLOWING PROCEEDINGS WERE HELD BEFORE THE HONORABLE
LARRY B. HYMAN, JR.,
IN THE GENERAL SESSIONS CIRCUIT COURT OF HORRY COUNTY
(15TH JUDICIAL DISTRICT) BEGINNING ON 10:35 AM ON THE
17TH DAY OF JUNE, 2010, IN CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
7TH JUDICIAL DISTRICT
PO BOX 280, DRAYTON, SC 29333

APPEARANCES:

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.... ON BEHALF OF THE STATE

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NO EXHIBITS WERE MARKED AND NO WITNESSES TESTIFIED DURING
THESE PROCEEDINGS.

1 BAILIFF:

2 Order in the court. All rise,
3 please.

4 THE COURT:

5 Thank you. Please be seated.

6 What do we have?

7 MS. LANDRUM:

8 Thank you, Your Honor.

9 Your Honor, we are here on the
10 matter of it Nelson McLeno (phonetic) Castro, Indictment
11 2010-GS-26-445 for trafficking cocaine.

12 Mr. Castro, Your Honor, was tried
13 before Your Honor --

14 THE COURT:

15 Uh-huh.

16 MS. LANDRUM:

17 -- in April; and convicted on
18 April 8th, 2010 to trafficking cocaine 28 to 100 grams
19 with a sentence of 15 years.

20 I believe that that Mr. Diggs has
21 several motions for The Court.

22 THE COURT:

23 All right. Mr. Diggs?

24 DEFENSE COUNSEL:

25 Yes, Your Honor -- uh -- and Madam

1 Solicitor, we -- uh -- Your Honor will recall in this
2 case:

3 We actually made post-trial
4 motions --

5 THE COURT:

6 Right.

7 DEFENSE COUNSEL:

8 -- on the record at the conclusion
9 of the case.

10 THE COURT:

11 Right.

12 DEFENSE COUNSEL:

13 And in terms of the substance of
14 those -- uh -- uh -- issues, I don't want to revisit them
15 today.

16 I think that the record reflects
17 -- uh -- pretty clearly and thoroughly what our objection
18 were; what Your Honor's rulings --

19 THE COURT:

20 All right.

21 DEFENSE COUNSEL:

22 -- were.

23 And so, I don't want to -- I don't
24 want to re-open for purposes of the record today.

25 But I do want to revisit the issue

1 of the sentence.

2 Uh -- Your Honor, as you recall,
3 the -- at the trial of the case, Mr. Castro was sentenced
4 to 15 years.

5 And we understand that the
6 sentencing range is -- uh -- 7 to 25 --

7 THE COURT:

8 Right.

9 DEFENSE COUNSEL:

10 -- here.

11 THE COURT:

12 I hit him about midrange.

13 DEFENSE COUNSEL:

14 So your -- Yes sir, you were.

15 And there were some other charges
16 that were pending -- uh -- against Mr. Castro as well.

17 But --

18 THE COURT:

19 I think they -- those have been
20 nolle-prossed; haven't they?

21 MS. LANDRUM:

22 Not --

23 DEFENSE COUNSEL:

24 They have, Your Honor.

25 MS. LANDRUM:

1 Not --

2 DEFENSE COUNSEL:

3 Well --

4 MS. LANDRUM:

5 Not -- Not yet, Your Honor.

6 THE COURT:

7 But the State doesn't intend to go
8 forward with them; do they?

9 MS. LANDRUM:

10 Uh -- Your Honor, according to Mr.
11 Graustein, who handles these, he says he has 5 pending.
12 And I did look this up. He has actually 4 pending
13 trafficking cocaine charges, and one possession with
14 intent to distribute schedule 1 through 5 pending.

15 The State is inclined to dismiss
16 or nolle-pross those charges, given the sentence on this
17 charge; but they have not yet been dismissed.

18 DEFENSE COUNSEL:

19 But -- And Your Honor, we
20 certainly appreciate that. And we understand the
21 position that the State is in, in this -- uh --
22 particular -- uh -- case.

23 But I would submit that:

24 Seven years, which is the
25 mandatory minimum -- which is available as a sentence in

1 case -- would -- would accomplish the same purposes.

2 What you have is a young man who
3 is 29 years of age. Basically the same set of facts on
4 -- uh -- all of these charges.

5 Your Honor will recall the young
6 man that came in to testify -- uh -- in the case.

7 And -- you know -- he would just
8 call Mr. Castro. And they would wire him up and send
9 him in there; and -- and do this undercover deal.

10 In fact, the evidence showed that
11 Mr. Castro was kind of a conduit between -- uh -- the
12 supplier and the ultimate user, which was the State's
13 confidential informant in this case.

14 THE COURT:

15 But Mr. Diggs --

16 DEFENSE COUNSEL:

17 Yes sir?

18 THE COURT:

19 -- the -- the videotape; didn't it
20 show Mr. Castro counting the money out?

21 Didn't it show Mr. Castro -- uh --
22 or at least hear Mr. Castro weighing the drugs?

23 He -- I recall a comment,
24 something about:

25 You know, you almost got a Q-P

1 here. Uh -- You got a could weight.

2 Uh -- I mean, didn't we have that
3 kind of conduct going on?

4 We had scales.

5 DEFENSE COUNSEL:

6 Your Honor --

7 THE COURT:

8 We had --

9 DEFENSE COUNSEL:

10 -- those things occurring, I
11 believe, on that video was certainly -- uh -- could be
12 construed that way.

13 The jury did.

14 You know, they construed it that
15 way.

16 But -- uh --

17 THE COURT:

18 And this was about a what? Two
19 day trial? Three day trial?

20 MS. LANDRUM:

21 Uh --

22 DEFENSE COUNSEL:

23 Two day's, Your Honor.

24 MS. LANDRUM:

25 I'm not sure, Your Honor.

1 THE COURT:

2 Two days; something like that?

3 MS. LANDRUM:

4 But the State would -- would like
5 a moment when you've reached that point, Your Honor.

6 THE COURT:

7 Okay; we'll talk about it.

8 DEFENSE COUNSEL:

9 He was tried on the seventh --
10 April seventh and eighth.

11 THE COURT:

12 Okay.

13 DEFENSE COUNSEL:

14 But, Your Honor, our argument
15 would be simply -- uh -- that:

16 The drug laws in the US are hard.

17 I know that's not really a

18 consideration --

19 THE COURT:

20 I understand

21 DEFENSE COUNSEL:

22 -- for This -- for This Court.

23 But -- But seven years is a long
24 time.

25 It's -- uh -- uh -- You've got a

1 young man here who has family and friends. Uh -- He's
2 going to be a father here in -- uh -- August.

3 And, Your Honor, I would submit
4 that seven years, which the Legislature has -- uh --
5 indicated was -- uh -- sufficient punishment for -- uh --
6 this type of -- or level of offense, Your Honor, we would
7 -- we would ask you to reconsider the sentence.

8 Just --

9 THE COURT:

10 And doesn't it -- As was indicated
11 earlier, doesn't the State still have three or four more
12 --

13 MS. LANDRUM:

14 Your Honor, we have --

15 THE COURT:

16 -- similarly serious offenses that
17 could be tried?

18 MS. LANDRUM:

19 Yes, Your Honor.

20 We have four trafficking cocaine
21 offenses and one possession with intent to distribute
22 schedule -- uh -- drugs as well.

23 THE COURT:

24 What were they again? I'm sorry.

25 MS. LANDRUM:

1 Mr. Castro to plead to the charge with a recommendation
2 of seven years; and that he refused that plea wanted a
3 trial.

4 Prior to trial -- uh -- The Court
5 informed him that he would likely get seven years if he
6 had pled. And he did not plea.

7 The jury deliberated for no more
8 than 10 minutes before convicting Mr. Castro.

9 THE COURT:

10 How long?

11 MS. LANDRUM:

12 Ten minutes, Your Honor.

13 Uh -- The evidence at trial, and
14 on the videotape, and the testimony of the CI -- uh --
15 showed that there were numerous similar drug transactions
16 -- uh -- that were talked about -- uh -- by the CI as
17 well as on the videotape.

18 As -- And as you know, we have all
19 of these pending against him as well.

20 We believe that the 15 years is
21 clearly not excessive or unwarranted given the evidence
22 that was presented at trial; and his propensity to engage
23 in illegal drug activity.

24 And I will say, Your Honor, that
25 the weight of the cocaine was 83.69 grams.

1 So it was more towards the 100-
2 gram level -- uh -- just for the -- uh -- The Court's --
3 uh -- information.

4 I believe that's all that Mr.
5 Graustein has asked me to cover, Your Honor.

6 DEFENSE COUNSEL:

7 Your Honor, just one -- uh --
8 final point.

9 Mr. -- uh -- Castro -- uh -- was
10 here in the United States legally.

11 Uh -- He is a citizen of El
12 Salvador.

13 He was not able to renew -- I
14 think it's a visa -- because of these pending charges.

15 Your Honor, he's going to be
16 deported.

17 And -- uh -- I would submit that's
18 a legitimate consideration.

19 You know, the expense that's going
20 to be allocated or required of the State of South
21 Carolina to support him -- uh -- when -- when a seven-
22 year sentence would be sufficient -- uh -- it would allow
23 him to be deported more quickly and the ends of justice
24 would be served.

25 And I would submit --

1 THE COURT:

2 What would --

3 DEFENSE COUNSEL:

4 It's a legitimate consideration --

5 THE COURT:

6 Yeah. Mr. --

7 DEFENSE COUNSEL:

8 -- by The Court.

9 THE COURT:

10 Mr. Diggs, you know, I look at
11 this case as a whole.

12 And what we have here are multiple
13 charges and multiple pending charges.

14 It's not a matter of -- of -- of a
15 single charge, an isolated incident.

16 We have all of these multiple
17 charges which the State -- And I anticipated that the
18 State would probably dismiss the other charges -- uh --
19 if an appropriate sentence was -- was given.

20 Uh -- I certainly don't penalize
21 anybody from going to trial. Uh -- But acceptance of
22 responsibility is, I believe, a valid -- uh --
23 consideration for The Court.

24 In this case, there was just
25 overwhelming evidence to -- a 10 minute -- uh -- uh --

1 period of deliberations by the jury -- uh -- videotapes
2 with all sorts of incriminating -- uh -- statements on
3 it.

4 Uh -- Visually, you can see him
5 counting out money.

6 We -- You can hear -- hear as they
7 weigh -- uh -- the -- the drugs.

8 Uh -- Everyone is very, very,
9 casual -- uh -- in -- in this -- uh -- this tape. And
10 the tape went on for quite some time.

11 Uh -- But if we -- if we look at
12 -- at the totality of the facts surrounding this -- this
13 situation, what does it -- what message does it say --
14 send?

15 What -- What does it say if a
16 Defendant gets the benefit of a minimum mandatory
17 sentence -- uh -- in a case where there are multiple
18 charges and overwhelming evidence.

19 All those things give me some
20 concern.

21 I believe that I -- I gave him
22 sort of a midrange sentence.

23 I -- I took into consideration the
24 fact -- uh -- that he was here legally.

25 And I took it into consideration

1 the fact that -- I think you mentioned to me that -- uh
2 -- he might be facing deportation.

3 Uh -- You know, I -- I was aware
4 of those. It didn't make me give him a higher or lower
5 sentence.

6 But -- uh -- But I believe that
7 this sentence is appropriate. And that -- uh -- I would
8 -- uh -- respectfully deny your motion.

9 Now, I am con -- interested in the
10 fact as to whether or not the State does intend to nolle-
11 pross the other charges?

12 MS. LANDRUM:

13 Uh -- Your Honor, according to Mr.
14 Graustein's notes, he stated -- and he -- he drew his own
15 words:

16 Uh -- Castro currently has five
17 trafficking and distribution charges pending.

18 The State is inclined to dismiss,
19 nolle-pross, these charges, given sentence of 15 years.

20 THE COURT:

21 There's certainly been no effort
22 to -- uh -- to go forward with those case?

23 MS. LANDRUM:

24 That's correct, Your Honor.

25 THE COURT:

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I'm going to deny your motion.

Thank you, Mr. Diggs..

MS. LANDRUM:

Thank you, Your Honor.

THE COURT:

All right.

DEFENSE COUNSEL:

Your Honor, thank you for hearing

us.

THE COURT:

All right. Delighted to have
heard you, Mr. Diggs; always. Okay.

WHEREUPON: There being nothing
further in this matter, these proceedings were closed on
June 17th, 2010 at 10:45 AM.

CERTIFICATE

I, THE UNDERSIGNED, H. EUGENE BUCKNER, CVR, OFFICIAL COURT REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE RECORDED ON THE 17TH DAY OF JUNE, 2010; AND THAT THE FOREGOING IS TO THE BEST OF MY ABILITY AN ACCURATE TRANSCRIPTION OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL NOR SOLICITOR TO ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS, NOR INTERESTED IN THE EVENT OF THE CAUSE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL
THIS 2ND DAY OF OCTOBER, 2010.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT, CONWAY, S.C.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.
Nelson H. Castro, Appellant.

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-378
Submitted June 1, 2012 – Filed June 20, 2012

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Christina J. Catoe, all

of Columbia; and Solicitor J. Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Nelson H. Castro appeals his conviction of trafficking in cocaine in an amount between twenty-eight and one hundred grams, arguing the trial court erred in (1) denying his motion for a mistrial when the confidential informant improperly testified about prior purchases of marijuana and cocaine from Castro and (2) penalizing Castro for exercising his Sixth Amendment right to trial by jury. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in denying his motion for a mistrial when the confidential informant improperly testified about prior purchases of marijuana and cocaine from Castro: State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) ("The decision to grant or deny a mistrial is within the sound discretion of the [circuit] court. The [circuit] court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." (internal citations and quotation marks omitted)); id. at 585-86, 698 S.E.2d at 865 ("A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial. Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." (internal citations and quotation marks omitted)).

2. As to whether the circuit court improperly penalized Castro for exercising his Sixth Amendment right to trial by jury: State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (noting that the South Carolina Supreme Court "has consistently held that a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review"); State v. Huggins, 336 S.C. 200, 203 n.2, 519 S.E.2d 574, 575 n.2 (1999) (applying preservation requirements to constitutional arguments).

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.