

State of South Carolina **RECEIVED**

In The Court of Appeals SEP 02 2015

Appeal from Williamsburg County SC Court of Appeals
Clifton Newman, Circuit Court Judge

The State,

Respondent,

v.

Faron M. Clements,

Appellant

Appellate Case No. 2014-002236

Cases

Table of Authorities

- Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963)
Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793, 19 L.Ed. 2d 737 (1967)
Williams v. Dutton, 400 F.2d. 797 (5th Cir., 1968)
State v. Shuler, 545 S.E.2d. 805 (2001)
Matthews v. State, 565 S.E.2d. 766 (2002)
Randall v. State, 591 S.E.2d 608 (2004)
Humphries v. State, 570 S.E.2d. 160 (2002)
State v. Bell, 374 S.C. 136, 646 S.E.2d. 888 (2007) Jury = 33 (2.10)
Palacio v. State, 333 S.C. 506, 511 S.E.2d. 62 (1999) Criminal Law = 1519(9)
Willis v. Leeke, 178 S.E.2d. 251, Const. art. 5. § 22; Code 1962, §§ 15-671,
16-665
Evans v. South Carolina, 363 S.C. 495, 611 S.E.2d. 510
State v. Rice, 375 S.C. 302, 652 S.E.2d. 409

Rules

- Rule 5, SCRE
Rule 6, SCRE
Rule 3, SCRE
Rule 401, SCRE
Rule 402, SCRE

Statement of The Case

On October 9, 2014, a Williamsburg County grand jury indicted Appellant for two counts of criminal sexual conduct with a minor in the second degree (2014-GS-45-0247). R. 37. The State, represented by Kimberly V. Barr, called the case for trial on October 13, 2014 before the Honorable Clifton B. Newman and a jury. M. Amanda Shuler represented Appellant. R. 1. The jury found Appellant guilty. R. 234, lines 21-23. Judge Newman sentenced Appellant to eleven years' imprisonment on each count and ordered the sentences to be served concurrently. R. 266, line 25 - R. 267, line 1.

Appellant filed a notice of appeal.

Statement of the Facts

On May 30, 2013, Minor ran away from home for the third time. R. 53, line 24 - R. 54, line 10. Initially, she went to "a boy friend's house" where she stayed for approximately two hours. R. 54, line 11 - R. 55, line 5. She spent the night of May 30, 2013 at the boy's grandmother's house. R. 55, line 6 - 21. During this time she was running from the police because she knew the police was looking for her as a missing person. While running, she lost her shoes in a ditch. R. 56, line 20 - 25. She believed she met Appellant on June 2, 2013 when she was shoeless and walking down a road. R. 56, lines 2 - 18; R. 57, lines 3 - 19. Appellant offered her a ride, which she accepted. Minor lied to Appellant about her name and age because she feared he would realize she was the missing person on the news. R. 58, line 15 - R. 59, line 9; R. 88, lines 13 - 22. Appellant asked about her missing shoes and she made up a story about her boyfriend Shawn stealing her shoes. She even made up a story about a "light blue trailer" where her boyfriend lived. However, when Appellant drove around looking for the trailer and her boyfriend to retrieve her shoes, Minor told him to forget about it. R. 60, lines 1 - 17. Thereafter Appellant took Minor to a gas station where he bought her water and gum. R. 60, line 25 - R. 61, line 22. He offered to buy Minor some food, but she declined. R. 87, line 22 - R. 88, line 12. Then Appellant and Minor went to Appellant's home. R. 61, line 25. Minor claimed she saw a male looking out the window as they approached. R. 62, lines 1 - 8. When she arrived at Appellant's home, she took a bath and changed into clothes that Appellant allowed her to use because she was dirty and had no clean clothes after being on the streets for several days. R. 62, lines 10 - 24. Minor claimed Appellant left her at the home with other man. She further claimed the man offered to pay her \$50 for oral sex, but she refused. R. 62, line 25 - R. 63, line 24. Additionally, she claimed the man asked her to have sex with him, but when she refused, he raped her in the living room. R. 64, lines 8 - 9

According to Minor, when Appellant returned home, she and he "ended up having sex." R. 65, lines 6-21. Appellant allegedly wore a condom during this sexual encounter. R. 65, lines 22-23. Appellant then took a shower and left the home. Minor went to sleep. R. 66, lines 10-13. When Minor woke up, Appellant had returned. R. 69, 17-22. Appellant, Minor, and another unknown male went to Shoe Show to buy Minor a pair of shoes. R. 67, 12-23. Minor claimed that she spent the night ~~at~~ with Appellant, sleeping in the same room. R. 70, 18-24. The next morning, Minor cooked and cleaned. R. 71, ~~lines~~ 3-8. She claimed that she performed oral sex on Appellant and the two engaged in sexual intercourse on that day without using a condom. R. 71, lines 14-25. However, that night, Appellant's girlfriend was at the house. According to Minor, Appellant instructed her to sleep in another bedroom, which she did. R. 73, lines 11-22; R. 74, lines 1-5. The following day, Appellant left and Minor began plundering through his things, R. 74, lines 6-14. She decided she wanted to leave so she called a friend to pick her up using Appellant's phone, to which she had access the entire time she was there. R. 81, lines 13-17; R. 82, lines 15-25. Before leaving, however, Minor hid a blanket she owned under one of the beds and combed out some of her hair and put it in the bathroom sink. Minor did these things "because if [she] were caught they would know that [she] was there and stuff like that." R. 81, lines 18-R. 82, line 14. Although Minor's friend picked her up, Minor was caught by police walking alone on the street on June 4, 2013. R. 83, lines 15-22; R. 118, lines 1-11. The police transported Minor to the local hospital. R. 137, lines 7-9. However, no rape kit was performed because that hospital would not perform rape kits on juveniles. R. 137, lines 10-13. When asked why police did not take Minor to Florence where a rape kit could be done, the investigating officer responded, "Well, the time we got her was 11:00 at night." Of course the Care House was not open or Durant Center was not open. And they both require three day window of opportunity to do one. By the time we would [have] gotten her there with appointment it'd have been past, three days." R. 137, lines 14-21.

The investigating officer could not answer whether the Durant Center or Care House would open for an emergency. R.137, lines 22-24. Further, the investigating officer opined that there would not have been any evidence anyway because Minor had bathed several times. R.138, lines 15-25.

Arguments/Statements of Issues on Appeal

The trial judge allowed the introduction of testimonial and photographic evidence of firearms found in my home where the evidence was irrelevant to the charges against me and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

Prosecutor, did not permit the inspection and copying of books, papers, ~~documents~~ documents, photographs, tangible objects, building or places, or copies or portions thereof which were within the possession, custody or control of and which were material to the preparation of my defense and were intended for use by the prosecution as evidence in chief at the trial; and were obtained from or belong to (me) the Defendant. (Rule 5)

Prosecutor, did not permit me to inspect and copy any results or reports of physical and mental examinations, and of scientific tests or experiments or copies thereof which were in the possession, custody, and control of the prosecution and the existence of which is known or by the exercise of due diligence may become known to the attorney for the prosecution and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial. (Rule 5)

Prosecutor, did not permit the inspection of any and all tape or electronic recordings, written statements or summaries made thereof by any officer or employee of the State, County, Sheriff or Solicitor's office with reference to all persons interviewed whether they are to be called as witnesses of the State or not.

Prosecutor, did not permit a complete and detailed list of the criminal record of all State's witnesses including any and all charges which may now be pending against them and which has not yet been officially disposed of by plea, trial or otherwise.

Prosecutor knew that the Defendant's (me) 5th and 14th Amendment entitled Due Process of Law was being violated and did not dismiss the case but prejudice me out of my Constitution Rights to have a fair trial: Because she had an old vendetta against me over a case she lost to me ten years ago whereas the jury found in favor of Defendant (me)!

In which she mentions twice during the trial. Once in front of the jury during closing arguments. And again at the end of trial during sentencing.

Prosecutor Kimberly Barr denied a motion to disclose evidence favorable to the Defendant (me) under the doctrines of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963); Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793, 19 L.Ed.2d. 737 (1967); and Williams v. Dutton, 400 F.2d. 797 (5th Cir., (1968))

Therefore Defendant did not safely go to trial without the production of those documents and in their absence was denied the due process of law as guaranteed by the Constitution of the State of South Carolina and the Fifth Amendment of the Constitution of the United States of America made applicable to the State through the Fourteenth Amendment to the Constitution of the United States.

There may be other items and matters of evidence, information, and data in existence that are not enumerated above or in the transcript and of which Defendant is unaware due to the secrecy surrounding and how poor the investigation was done!

Prosecutor cannot vouch for the credibility of a witness by expressing or implying her personal opinion concerning a witness truthfulness. State v. Shuler, 545 S.E.2d. 805, (2001).

Additionally, [i]t is inappropriate for the state to assure the jury of a witness credibility because the jury is charged with assessing the credibility of witnesses base on evidence in the record. Matthews v. State, 565 S.E.2d. 766, (2002).

The jury could have drawn an adverse inference from the comments that the prosecution made [see trial transcript page 173, line 2, line 8-10, line 15-16.] that applicant was prejudice thereby!

The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Humphries v. State, 570 S.E.2d 166, (2002).

A solicitor has a right to state their version of the testimony and to comment on the weight to be given such testimony. Randall v. State, 591, S.E.2d. 668 (2004). However, [A] solicitor may not vouch for the credibility of a state's witness based on personal knowledge or other information outside the Record...

August 24, 2015

Prior to my trial, during the court term of September 17, 2014 before The Honorable R. Ferrell Cothran, JR. My Attorney ask for some "pictures that had not been provided to her yet" and some "additional statements from the victim." R. 4, lines 22-25. The Prosecutor did not give her that information in the first motion of discovery. The Prosecutor left out or withheld valuable information that was needed for the preparation an defence of my trial. The statements were pertaining to the alleged victim's events of that weekend. R. 5, lines 19-23; R. 8, lines 3-19. Hours before my trial was to begin my Attorney was given a short time to look at some of those records. R. 13, line 22 - R. 14, line 9. Part of the information we were seeking the judge ~~order~~ ordered it to us. R. 18, line 17 - R. 19, line 5; R. 20, lines 4-5; R. 21, lines 5-15. The other information my attorney ask for prior to trial was not given up to her either. R. 27, line 19 - R. 28, line 1; R. 28, lines 8-16; R. 29, line 23 - R. 30, line 18. In addition my Attorney subpoenas two witnesses that were not served until the last minute also. And one could not make it because he was to be in surgery October 14, 2014. R. 32, lines 6-17. Defense cannot safely go forward because of the absence of the witness! R. 33, line 21 - R. 34, line 6. Therefore, a motion to continue was put in but denied by the judge unfairly. R. 34, lines 6-10; R. 35, line 19-23. The Prosecutor's whole case was base on saying and doing things to emanate emotions of the jury.

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In the beginning of direct examination prosecutor started alleged victims story of being a hurricane Katrina (New Orleans) survivor. Immediately prosecutor begin to lead alleged victim in an inconsistent story about her events of May 30, to June 4, 2013. R. 54, lines 2-5; R. 62, lines 15-20; R. 63, lines 2-22; R. 74, line 18; R. 75, line 19-R. 76, line 1. There were things said during the trial by the alleged victim that was never mentioned to the police. R. 49, line 5-R. 105, line 9. The prosecution lied about different things and the Rule 5 disclosure. R. 111, line 17-R. 112, line 16. In the police testimony he was asked "did y'all followed up on this other rape that happened too?" The police said "She never told us about it being rape, just only told us about him asking her to have sex. She never said she was raped." R. 145, line 15-R. 146, line 7. The police said that in her statement they ask her "did the other person with the gray and black hair attempt to have sex with you?" she said "Yes, and I told him no. He just kept touching me and I said no." R. 149, line 3-R. 150, line 20. Would not just the touching or sexual assault/battery be worthy of an investigation? If a man can go to prison for having child pronography then what is the punishment for touching or sexually harassing a child? The prosecutor vouched for the credibility of the alleged victim by expressing or implying her personal opinion concerning a witness truthfulness. R. 173, line 2; R. 173, lines 8-10; R. 173, lines 15-16. (Matthews v. State, 565 S.E.2d. 766 (2002))

The prosecutor even went as far as to tell the jury of a story (about me but she didn't use or tell them it was my case from years before) to make the jury judge not the evidence, but find me guilty on a gut feeling or belief. R. 178, line 7-R. 179, line 11. Prosecutor went so far as to say "because of television because we expect with forensic files and CSI and Law and Order that there is supposed to hear about a whole bunch of stuff that you're supposed to hear about and see in a case before you can find the defendant guilty. Folks, that's not the case." A trial is a search for the truth. What she ask the jury was to go on emotions. That's not the law. That's not reasonable doubt but therefore prejudice, unfair, and impartial. In this case the prosecutor had a high burden to prove. They did not meet that burden of proof beyond a reasonable doubt. There is a point during my trial where one of my juror's took sick during deliberations. R. 205, lines 3-11. The judge had already excused my two alternates. R. 201, lines 3-16. The judge, ~~who~~ instead of asking the prosecutor what to do or whether to declare a mistrial, could've and should have called it a mistrial. R. 205, lines 15-16. It was not my decision to stipulate to deliberate with 11 juror's. R. 209, lines 13-24. I didn't even know what the judge was asking. At the time I didn't even know what "stipulate to deliberate" mean. R. 210, line 17-R. 211, line 1. And I strongly said to my attorney that I wanted 12 jurors. R. 213, line 6. When the jury said that they wanted to or needed to come back tomorrow morning. R. 211, lines 18-20.

So after picking one of the 13th juror's to come back. R. 212, line 20-R. 213, line 19. Therefore, by the judge's calling court should have been done for that day. R. 213, line 24-R. 214, line 9. At the end of the trial after the eleven jurors said guilty; I told the judge all about how wrong I felt and how my trial went. R. 247, line 5-R. 251, line 9; R. 252, line 15-R. 253, line 16; R. 253, line 24-R. 254, line 22. The whole time I was looked and laughed at like a bad joke. R. 254, line 21. I even told the judge the fact that I did not know one of the 11 jurors was a mentally retarded man. R. 248, lines 2-3. With less than a fifth grade education. But the prosecutor laughed in my face. R. 261, lines 6-9. Then she went on to tell her story over that she told the jury earlier on. R. 261, lines 9-13.

This is my Brief; this is my attempt to show how and what I think by law I was done unfairly and unjust. I ask that you please look into the transcript of my trial. Look deep and hopefully you will find for your self how wrong I was treated. Please consider all that I have said and tried to show and even the things that you see that I did not. Thank You!

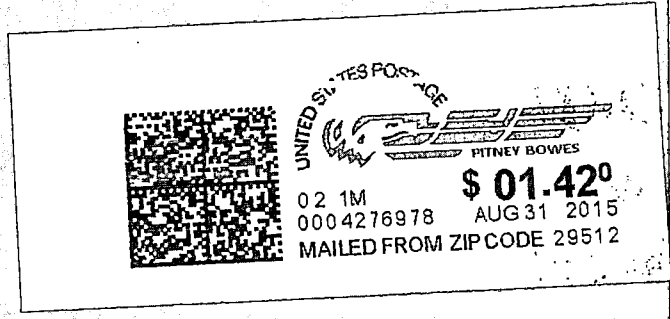
I am,

P.S. Please excuse my Appellate Defender Susan B. Hackett's Brief whereas she may have misnumber the pages to look on..

Sincerely yours,

Faron Clements

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