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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS

RECEIVED

-The State of South Carolina )  
-v- )  
Troy Stevenson, )  
Defendant. )

ORDER

Indictments – 2014-GS-40-734, 735, 736, 739

FILED  
RICHLAND COUNTY  
OCT 15 AM 9:55  
2015  
SC Court of Appeals  
T. W. HENDON  
C.P. & G.S.

This matter came before the Court pursuant to the Defendant's Motion to Dismiss Indictments filed by defense counsel, Aimee Zmroczek, on September 10, 2015. The Defendant's Motion alleged that he was entitled to dismissal of the indictments based on grounds of double jeopardy. Defendant supplemented his initial motion with a memorandum on September 30, 2015. The Court held a hearing on this matter on October 12, 2015. Present at the hearing were K. Luck Campbell, Esquire, Dolly Garfield, Esquire, and Joanna McDuffie, Esquire, representing the State; and Aimee Zmroczek, Esquire, representing the Defendant, and the Defendant, Troy Stevenson.

The Defendant, Troy Stevenson, along with his two co-defendants, Lorenzo Young and Trenton Barnes were charged with Murder, Burglary Second Degree Violent, Attempted Armed Robbery and Kidnapping for their role in an incident occurring on July 1, 2013, which resulted the death of the victim, Kelly Hunnewell. The State proceeded with the trial of Lorenzo Young and Trenton Barnes on November 10, 2014. On November 19, 2014, the jury returned verdicts of guilty on all counts with respect to Lorenzo Young and Trenton Barnes. On June 15, 2015, the State proceeded to trial on the Defendant, Troy Stevenson. The Honorable Robert E. Hood presided over the trial of the Defendant.

After the case was submitted to the jury, the State moved for a mistrial based on juror misconduct that resulted in manifest necessity. The defense objected to the motion for a mistrial. On June 22, 2015, the Court found that the ends of public justice would not be served by a

continuation of the proceedings and that manifest necessity required granting of a mistrial. The re-trial of this case is scheduled for the week of November 2, 2015.

The Double Jeopardy Clause of the United States and South Carolina Constitutions protects a criminal defendant from being subjected to multiple prosecutions for the same offense. U.S. Const. amend. V; S.C. Const. art I, §12. Jeopardy attaches “when the jury is sworn and impaneled, unless the defendant consents to the jury's discharge before it reaches a verdict or legal necessity mandates the jury's discharge.” *State v. Baum*, 355 S.C. 209, 584 S.E.2d 419 (Ct.App.2003), petition for cert. filed; *State v. Rowlands*, 343 S.C. 454, 539 S.E.2d 717 (Ct.App.2000).

A manifest necessity exists when some event occurs at trial that creates “a situation where the defendant’s right to have the trial continue to termination in a judgment is outweighed ‘by the public’s interest in fair trials designed to end in just judgments.’” *Wade v. Hunter*, 336 U.S. 684, 689 (1949). What constitutes a “manifest necessity” depends on the circumstances of each case. The United States Supreme Court, in *Arizona v. Washington*, 434 U.S. 497, 506 (1978), explained that the “manifest necessity” standard is not one that “can be applied mechanically or without attention to the particular problem confronting the trial judge.” The constitutional prohibition against double jeopardy permits a retrial following a mistrial if there was “manifest necessity” for the mistrial, and that the discretionary power of a court to declare a mistrial ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes. *U. S. v. Perez*, 9 Wheat 579, 6 L.Ed. 165 (1824). Nonetheless, the United States Supreme Court has recognized the broad discretion reserved to a trial judge in declaring a mistrial in the “varying and often unique situations arising during the course of a criminal trial.” *Illinois v. Somerville*, 410 U.S. 458, 93 S.Ct. 1066, 35 L.Ed.2d 425 (1973). The test for granting a mistrial is whether the mistrial was dictated by manifest necessity or the ends

of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment. *Illinois v. Somerville*, supra; *Wade v. Hunter*, 336 U.S. 684, 69 S.Ct. 834, 93 L.Ed. 974 (1949).

“In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences.” *State v. Cooper*, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). However, “[u]nless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict.” *Id.* “The general test for evaluating alleged juror misconduct is whether or not there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence.” *State v. Zeigler*, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct.App.2005).

“Initially, the trial [court] must make a factual determination as to whether juror misconduct has occurred.” *Zeigler*, 364 S.C. at 109, 610 S.E.2d at 867. If juror misconduct has occurred, the trial court must then determine whether the misconduct has improperly influenced the jury. *Id.* In such cases, the trial court is in the best position to determine the credibility of the jurors and is granted broad deference on this issue. *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998).

During the course of the Defendant's trial, the Court repeatedly instructed the jury throughout the trial to refrain from discussing the case in any way with anyone including each other. This instruction was given to jurors at relevant points including before each recess, at breaks, at lunch, and before the jury was excused each evening of the trial.

On Wednesday, June 17, 2015, the jury informed the Court that the Defendant's family or someone associated with the Defendant commented to juror number 235, Braylyn Salmond, to “have a good night, or have a good day, juror.” The jury also informed the Court that the Defendant's family or individuals associated with the Defendant were gathering around the stairs in the courthouse; thus, requiring that the jury to pass through them in order to leave the

building. Both the State and Defense consented to the jury being questioned about any communications by the Defendant's family members and/or associates. During the questions, the jury conveyed to the Court that they were uncomfortable when entering and exiting the courthouse due, in part, to the circumstances discussed above. The Court took appropriate measures to ensure juror safety including assigning extra security and providing an alternate route for entry and exit at the courthouse.

The Defendant's case was submitted to the jury for deliberations on June 22, 2015. At that time, the Court, with the consent of the State and the defense discharged the alternate jurors of their duties. Approximately an hour after the jury began deliberations, officers with the City of Columbia Police Department reported to the State that after deliberations had begun and the alternates were released, they witnessed alternate juror number 183, Lisa McLean, embrace a member of the Defendant's family or someone associated with the Defendant. Law enforcement then observed alternate juror 183, Lisa McLean and another alternate juror on the street with a member of the Defendant's family. The State promptly notified the Court and defense counsel of the officers' observations.

As a result of this information, the Court discussed the matter with counsel. With the consent of both the State and the Defendant, the Court questioned the jury regarding any contact with the Defendant's family or associates. During this questioning, several members of the jury disclosed to the Court statements made by alternate juror 183, Lisa McLean regarding the case. As a result of this information, the Court conducted individual questioning of each juror regarding potential juror misconduct in the presence of all parties.

Eleven jurors indicated they heard alternate juror number 183, Lisa McLean, make statements early in the trial to the effect of "this is ridiculous, I've already made up my mind." Juror number 229, Zamyra Rogers, stated that alternate juror number 183, Lisa McLean, was

very vocal about her feelings about the case, "that it was just wrong place wrong time" and that she didn't believe everything. Juror number 110, Tonya Harrington, informed the court that alternate juror number 183, Lisa McLean whispered to her "that the defendant was not guilty and the blacks should stick together." Juror number 146, Pamela Knightner, stated that she heard jurors discussing the case, specifically the video prior to deliberations. These communications occurred prior to the submission of the case to the jury and in direct violation of the Court's orders not to discuss the case with anyone including each other. Furthermore, the jury failed to report any of the above mentioned misconduct to the Court.

Additionally, during the individual questioning, the Court inquired of each juror as to whether he or she could be fair and impartial when deciding this case. Eleven of the twelve jurors responded affirmatively. However, juror number 146, Pamela Knightner, when asked about her ability to be fair to both sides responded "I'm sure trying" which she followed with laughter when questioned as to whether she could remain impartial.

The scope of misconduct in this case includes but is not limited to the following: the gross misconduct on the part of alternate juror 183, Lisa McLean, in attempting to influence the jury and complete disregard of the orders of the Court; the conduct of the Defendant's family and associates by improperly contacting and intimidating the jury; the failure of the jury to report the conduct of alternate juror number 183, Lisa McLean; premature deliberations; and the lack of an affirmative response by juror number 146, Pamela Knightner, when asked about her ability to be fair and impartial. In granting the State's motion for a mistrial, the Court found that the jury was affected by outside influences and internal misconduct that irreparably impacted the jury's impartiality resulting in manifest necessity. The Court further found the ends of public justice would not be served by a continuation of the proceedings.

On August 24, 2015, the Court required alternate juror number 183, Lisa McLean, to

appear for a rule to show cause on whether she should be held in contempt of court. At the contempt hearing Lisa McLean was represented by Constantine Pournaras, Esquire, and Rhodes Bailey, Esquire. During the hearing, Ms. McLean admitted that she attempted to influence the other jurors and violated the orders of the Court. The Court held Ms. McLean in contempt and sentenced her to six months in jail suspended on the payment of court costs and three hundred hours of community service.

During the hearing on October 12, 2015, regarding the Defendant's motion to dismiss, the Defendant failed to present any evidence that manifest necessity did not exist at the time the mistrial was granted. Most significantly, in response to questioning by the Court, counsel for the Defendant conceded that had the jury been allowed to continue to deliberate and the Defendant convicted, her failure to move for a mistrial based on juror misconduct would be a ground for Post-Conviction Relief.

The Court finds that jeopardy does not prohibit the retrial of the Defendant on the above indictments because the grant of the mistrial was dictated by manifest necessity and the in the interest of public justice.

NOW THEREFORE, IT IS ORDERED that Defendant's motion to dismiss based on a violation double jeopardy is hereby denied.

AND IT IS SO ORDERED.



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The Honorable Robert E. Hood  
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina  
October 15, 2015