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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SHANA ( , ROBINSON,

APPELLANT

APPELLATE CASE NO 2014-001272

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*PRO SE* BRIEF OF APPELLANT

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SHANA C. ROBINSON, 360268
Appellant

Camille GG Correctional Inst.
4450 Broad River Road
Columbia, SC 29210

## TABLE OF CONTENTS

TABLE OF CONTENTS.....1

STATEMENT OF ISSUE ON APPEAL.....2

STATEMENT OF THE CASE.....3

ARGUMENT

The trial judge erred in not allowing a juror to be excused when he asked, by cajoling him and making a prejudicial comment.

The trial judge erred in not disregarding prejudicial testimony that had been previously agreed upon, as a matter of record, by which the judge said they would be bound.....4

CONCLUSION.....7

## STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in not allowing a juror to be excused when he asked, by cajoling him and making a prejudicial comment?

Did the trial judge err in not disregarding prejudicial testimony that had been previously agreed upon, as a matter of record, by which the judge said they would be bound?

## STATEMENT OF THE CASE

In April of 2014, the Berkeley County Grand Jury indicted Robinson for felony driving under the influence resulting in death, indictment # 2014-GS-08-0313. On June 2, 2014, Robinson proceeded to jury trial before the Honorable Deadra L. Jefferson. Aaron Mayer represented Robinson at trial. Mason West and Bryan Alfaro prosecuted the case. The jury returned a verdict of guilty. Judge Jefferson sentenced Robinson to seventeen (17) years in prison. A timely notice of intent to appeal was served on June 10, 2014. This appeal follows.

## ARGUMENTS

The trial judge erred in not allowing a juror to be excused when he asked, by cajoling him and making a prejudicial comment.

The trial judge erred in not disregarding prejudicial testimony that had been previously agreed upon, as a matter of record, by which the judge said they would be bound.

On November 10, 2011, the car driven by Appellant Robinson and the car driven by Candy Zoll were involved in an accident resulting in the death of Ms. Zoll. Ms. Zoll's blood tested positive for marijuana. (R. p. 912, line 24 – p. 913, lines 1-23). Appellant's blood was drawn at the hospital following surgery to remove her spleen as a result of the accident. (R. p. 331, line 1 – p. 332, lines 1-13; p. 449, lines 10 – 24, p. 444, lines 2 – 7). Fifteen minutes prior to the blood draw Appellant began receiving a blood transfusion. (R. p. 448, line 6 – p. 449, 450, lines 1 – 4). A forensic toxicologist from the South Carolina Law Enforcement Division [SLED] testified that Appellant's blood tested positive for .09% ethanol. (R. p. 377, lines 12 – 13). Appellant's blood also tested positive for other medications, some administered for treatment of her injuries sustained in the accident and others prescribed to appellant prior to the accident. (R. p. 377, line 17 – p. 378, line; pp. 380 – 382; R. p. 830, lines 2 – 20). Appellant suffers from Stevens Johnson syndrome. (R. p. 824, lines 8 – 25). The toxicologist testified that the prescribed medications were

within therapeutic dosing ranges. (R. p. 382, lines 19 – 21; p. R. p. 420, line 23 – p. 421, 422, 423, lines 1 – 10).

The trial began on June 2, 2014. The jury was selected and given an introduction by the court. (R. p. 34, 35, 36, lines 1 – 25; R. p. 37, lines 1 – 18). Once the jury was released, a juror approached the bench to confer with the judge. (R. p. 37, lines 21 – 23). The trial judge then explained that the juror did not want to serve, but she cajoled him stating "it will be interesting". (R. p. 37, lines 24 - 25; R. p. 38, lines 1 – 3) She also followed her explanation with "So I will just keep an eye on him to make sure that he is keeping his word to me." (R. p. 38, lines 3 – 21). The trial judge kept the juror after asking to be excused. She talked him into staying and said that she would keep an eye on him; no indication was ever given as to any follow up with the juror to make sure that he was keeping his word. *Ad convincendeim con scientiam judicis* was clearly shown.

The attorneys made an agreement within a pretrial motion, by which the judge said they would be bound. (R. p. 200 lines 7 – 25; R. p. 201, lines 1 - 3). Later in the trial, upon direct examination by the prosecution, Officer Chadwich Pearson of the Highway Patrol brought up the restricted material (R. p. 497, lines 1 – 2). Pearson stated "There was a green leaf material that was believed to be..." An objection was immediately made. (R. p. 497, line 4). The judge never made a ruling on the objection even

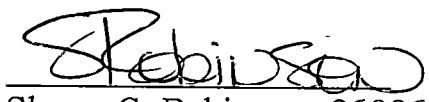
though an off the record bench conference was held. (R. p. 497, lines 9 – 11).

The information that was agreed upon not to be discussed, was introduced without a disregard for the testimony by the judge. The prejudicial testimony was heard by the jury and was prejudicial against the defendant. Based on the admitted testimony, the jury was free to form an opinion from the prejudicial testimony that led to the conviction of the defendant. It was never discussed that this information had actually been thrown out prior to the trial, an evidentiary matter that may have helped to bring up in light of the damaging testimony.

## CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Shana C. Robinson, 360268
Appellant

This 2nd day of June, 2015.

Shawn Robinson, 360268
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Columbia, SC 29210

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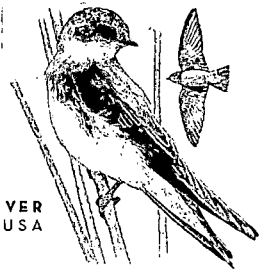

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