STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

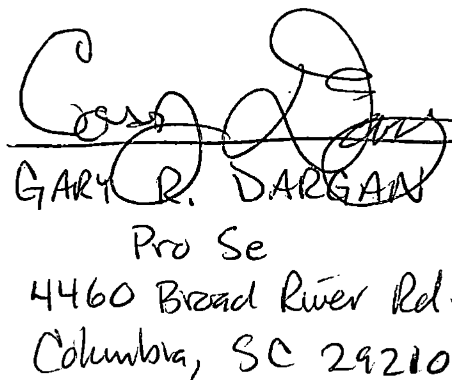
GARY R. DARGAN,
#247773

APPELLANT.

APPELLATE CASE NO. 2014-000851

PRO SE ANDERS BRIEF OF APPELLANT

Date: October 28, 2015



GARY R. DARGAN
Pro Se
4460 Broad River Rd.
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STATEMENT OF ISSUE ON APPEAL

ISSUE 1: The trial court erred in infringing upon the Defendant's right to be present and heard at every stage of the criminal proceedings against him.

ISSUE 2: The trial court erred in admitting several trial exhibits which directly attributed overtly racially charged words, beliefs, views and slurs to the Defendant where such exhibits inextricably injects race into the trial thereby infringing the Defendant's right to an impartial jury and a fair trial.

ISSUE #1 : The trial court erred in infriging upon the Defendant's right to be present and heard at every stage of the criminal proceedings against him.

This issue centers upon the trial court's decision to exclude Defendant Dargan and his attorney from participating in the conflict-of-interest inquiry and colloquoy regarding trial court's potential bias against family members and friends of Jamal Helton, the individual who victimized trial court William Jeffrey Young in a home burglary.

Concerns developed during trial regarding the impartially of trial court Young, specifically the concerns surrounded bias the trial court Young may have bias against Defendant Shonta Helton because she is a blood relative sister of the individual who victimized trial court Young in a home burglary. The Defendant Helton and her attorney Kent were allowed to engage in a fact-finding colloquoy with trial court Young. During this fact-finding colloquoy the trial court Young specifically inquired whether Shonta Helton participated in the home burglary or gained from the home burglary, to which Shonta Helton answered negative. This colloquoy and answers from Shonta Helton satisfied trial court Young such that he did not recuse himself.

The trial court Young did not engage the Defendant Dargan at all in colloquoy regarding trial court Young's potential impartiality against the family members and friends of Jamal Helton. The trial court Young excluded the Defendant and his trial attorney Murphy from participation in the conflict-of-interest inquiry and colloquoy regarding trial court's potential bias against family members and friends of Jamal Helton. The Defendant Dargan did not make a Knowing and voluntary waiver of inclusion in the conflict-of-interest inquiry and colloquoy regarding trial court's potential bias against family members and friends of Jamal Helton. This factual background is significant because Jamal Helton's and the Defendant Dargan's relationship is regarded as "brother-in-laws" because Dargan has had a lengthy romantic relationship with Jamal Helton's sister, Shonta Helton, and Dargan has a rooted and extensive familial relationship with the Helton family as a whole. Additionally, there is talk that got back to law enforcement that Jamal Helton liquadated the items he obtained from the house burglary of trial judge Young's residence to

Defendant Dargan in exchage for cash and narcotics. It is a real probability that trial court Young is aware of this information and this information stirred bias and partiality within the Defendant Dargan's trial such that a trial court recusal was necessary.

Pre-trial proceedings are "critical" if the presence of counsel is essential "to protect the fairness of the trial itself." The guarantees afforded a criminal defendant at trial also protect him at certain stages before the actual trial, and any alleged waiver must meet the strict standard of an intentional relinquishment of a known right. The "trial" guarantees that have been applied to "pre trial" stages of the criminal process are similiarly designed to protect the fairness of the trial itself. (See United States v. Wade, 87 S.Ct. 1926 and Gilbert v. California, 87 S.Ct. 1951).

Appellant's exclusion during this proceeding deprived him of the means to challenge the sufficiency of the trial judge Young's inquiry before the determination of the impartiality of trial judge Young regarding the judge being the victim of burglary at the hands of Appellant's "brother-in-law" Jamal Helton. Appellant did not make a

Knowing and voluntary waiver of exclusion from the inquiry and colloquoy regarding trial judge Young's impartiality. (See State v. Whaley, 351 SE2d 340 (1986); and In re Dwayne M., 339 SE2d 130 (1986)). It is central to the right to counsel principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. (See Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758; and Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199).

A showing of prejudice is not an essential component of a violation of the rule announced in Geders v. U.S., 425 U.S. 80, 96 S.Ct. 1330. In that case the U.S. Supreme Court simply reversed the defendant's conviction without pausing to consider the extent of the actual prejudice, if any, that resulted from the defendant's denial of access to his lawyer during overnight recess. That reversal is consistent with the views the U.S. Supreme Court have often expressed concerning the fundamental

importance of the criminal defendant's constitutional right to be represented by counsel. (See, e.g., United States v. Cronic, 466 U.S. at 653-654, 104 S.Ct. at 2043-2044; Chapman v. California, 386 U.S. 18, 23, n.8, 87 S.Ct. 824, 827-828, n.8; Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792; and Glasser v. United States, 315 U.S. 60, 76, 62 S.Ct. 457, 467-468).

ISSUE 2: The trial court erred in admitting several trial exhibits which directly attributed overtly racially charged words, beliefs, views and slurs to the Defendant where such exhibits inextricably injects race into the trial thereby infringing the Defendant's right to an impartial jury and a fair trial.

This issue centers upon the trial court's decision to admit the State's exhibit Numbers 46, 47, 48 and 49. These exhibits are actually letters purported to be written by the Defendant to several state witnesses during his pre-trial detention incarceration. The letters contain inflammatory and racially charged slurs, beliefs and views held by the Defendant. The language and contents of the letters are of such a nature that thier words are generally banned by decency laws and F.C.C. regulatory laws from dispersement to the general public in everyday settings. To illustrate the sensitive and inflammatory nature of the racially charged language and its saturated usage in the Defendant's letters which were used as state's exhibits, the following itemized catalog is necessary:

- Exhibit 46 (Letter to Debbie Prince) uses the racial slurs "Nigger" one (1) time, and "Cracker" one (1) time.

- Exhibit 47 and 48 (Collection of letters to Marcus Mellette).
Letter envelope dated December 2, 2013 uses racial slur "Nigger" (48) times.
Letter envelope dated January 3, 2014 uses racial slur "Nigger" (4) times.
Letter envelope dated January 7, 2014 uses racial slurs "Nigger" (16) times, and "Cracker" (4) times.
Letter envelope dated February 10, 2014 uses racial slurs "Nigger" (3) times, and "Cracker (4) times.
Letter envelope dated February 15, 2014 uses racial slur "Nigger" (3) times.
Letter envelope dated March 4, 2014 uses racial slur "Nigger" (11) times.

- Exhibit 49 (Letters to Reco Ham). uses the racial slurs "Nigger" (25) times, and "Cracker" (3) times.

The total times the jury heard the racial slur "Nigger" read into the trial and directly attributed as slurs, beliefs, views and words of the Defendant is one hundred (100) times. The total times the jury heard the racial slur "Cracker" read into the trial and directly attributed as slurs, beliefs, views and words of the Defendant

is twenty-three (23) times. Race and racial bigotry was unnecessarily injected into this trial in the most inflammatory way and it permeated the trial by way of the Defendant's slurs, beliefs, views and words as read into the trial records as state's exhibits 46, 47, 48 and 49. The inflammatory racially charged language of the letters and racial slurs directed at African-Americans and Caucasian-Americans will have overwhelming prejudicial impact the Defendant and create an unfair trial, this specific point was argued in an objection by Attorney Murphy to the trial court. (See Tr. Appx. pg 27 line 11-19). The Attorney Murphy requested the trial court to at least excise the inflammatory racial references from the letters that are produced to the jury. (See Tr. Appx pg. 27 line 23 - pg. 28 line 1). The trial court signaled an affirmative agreement that the racially charged content of the letters is apparent and that he would resolve Attorney Murphy's objections and requests. (See Tr. Appx. pg. 28 line 2).

The trial court did not resolve the matter on the record. The Attorney Murphy renewed his objections on the prejudicially injected inflammatory language of the letters. (See Tr. Appx. 374 line 17 – 19; pg. 433 line 12 - 13; pg. 621 line 8 – 9; and pg. 710 line 12 – 15). The trial court denied the objections and requests.

The trial court abused his discretion in allowing the contested state exhibits 46, 47, 48 and 49 for admission as evident in this trial, this abuse of discretion deprived the Defendant of a fair trial and warrants reversal of Defendant's convictions and sentences. The trial court abused his discretion in disallowing the redaction of the letters contents and limiting instructions of the racially charged slurs, beliefs, views and words embodied in the letters and testimony regarding exhibits 46, 47, 48 and 49 before producing them to the jury. This abuse of discretion deprived the Defendant of a fair trial and warrants reversal of Defendant's convictions and sentences.

The State of South Carolina's legal jurisprudence has recognized that the admission of repeated racial slurs are sufficiently inflammatory and polarizing such that it injects race into the underlying trial. (See Davis v. Traylor, 530 SE2d 385). Additionally, this reasoning stands even if the evidence is relevant because, although relevant, the prejudicial effect of its admission substantially outweights the probative value of the evidence.

The admission of the repeated racial slurs "Nigger" one hundred (100) times and "Cracker" twenty-three (23) times are so polarizing and inflammatory that it negatively injected race into this trial. The effects of racially charged wards are real and its effect an the psyche and actions and decisions of those inflamed and polarized are real. (See Davis v. Traylor, 530 SE2d 385 (S.C. App. 2000); Mosby-Grant v. City of Hagertown, 630 F3d 326 (4th Cir. 2010); Boggs v. Bair, 695 F. Supp 864; and Calhoun v. U.S., 133 S.Ct. 1136.

As a general rule, inflammatory remarks which are calculated to appeal to the passions or prejudices of a jury should be affirmatively condemned. (See South Carolina State Highway Dep't. v. Nasim, 179 SE2d 211). Whether or not the particular remarks are so prejudicial as to constitute reversible error depends upon the nature of the utterances and the circumstances under which they were made. Under certain circumstances, the S.C. Supreme Court will grant a new trial despite the aggrieved party's failure to contemporaneously object to the remark if the prejudice caused by the remarks is clear. (See Dial v. Niggel Assoc., Inc., 509 SE2d 269, 271 (1998) and Toyota of Florence, Inc. v. Lynch, 442 SE2d 611, 615 (1994)).

When the fact that these inflammatory racially charged slurs, beliefs, views and words of the Defendant (read to the jury through exhibits 46, 47, 48 and 49) bombarded the jurors at least one hundred and twenty-three (123) times is coupled with the fact no curative measures were done to either redact or give instructions on the inflammatory nature of the contents of the

letters to the jury, it then becomes clear the fundamental fairness of this trial eroded the moment race seeped in and permeated this trial with the production of exhibits 46, 47, 48 and 49 to the jurors. The Defendant is entitled to be tried before impartial jurors at a fair trial under fair impartial process as proscribed by the U.S. Constitution Amendment V and Amendment XIV, the Defendant's rights were infringed in this trial. (See Sullivan v. Lousiana, 508 U.S. 275, 277-278, 113 S.Ct. 2078, 2080, 124 L.Ed. 2d 182 (1993); Sandstrom v. Montana, 442 U.S. 510, 512, 99 S.Ct. 2450, 61 L.Ed. 2d 39 (1979); and S.C. Constitution Article V, 22).

 (END).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Gary R. Dargan, #247773 Appellant,	)	Appellate Case No.: 2014-000851
v.	)	CERTIFICATE OF SERVICE
State of South Carolina, Respondent.	)	

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I do hereby certify that I have served a true copy of the "Pro Se Anders Brief of Appellant" on the S.C. Court of Appeals on October 28 2015 by depositing said documents in the U.S. Mail, postage pre-paid, via hand delivery to the Broad River Prison mailroom personnel, addressed to the following:

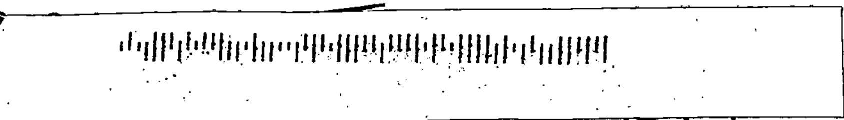
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

SWORN and Subscribed before me
this 28th day of October 2015.

[signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: My Commission Expires March 5, 2018

[signature]

Clif

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