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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT

APPELLATE CASE NO. 2014-002548

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting an unredacted letter written by appellant's co-defendant that implicated appellant by name in the murder over appellant's hearsay objection, and in not granting a mistrial after appellant's objections that no limiting instruction could be sufficient?

STATEMENT OF THE CASE

On February 19, 2014, a Richland County grand jury indicted appellant for murder, kidnapping, second-degree burglary, and attempted armed robbery. R.1619 Appellant was indicted along with Trenton Barnes ("Barnes") and Troy Stevenson ("Stevenson"). Barnes and Stevenson are brothers. On November 10, 2014, Appellant and Barnes were tried together before the Honorable Robert Hood and a jury. R 1. Dolly Garfield, Luck Campbell, and Nicole Simpson represented the State. R 1. Tracy Pinnock, Stephen Krzyston, and Jacqueline Bambach represented appellant. R 1. Mark Schnee represented Barnes. R 1. The jury convicted both defendants on all charges. R. 1593, l. 8 – 1594, l. 8. Judge Hood sentenced appellant to consecutive terms of fifteen years' imprisonment for burglary, twenty years' imprisonment for attempted armed robbery, and life imprisonment without the possibility of parole for murder. R. 1612, l. 13 – 1613, l. 4. This appeal follows.

ARGUMENT

The trial court erred in admitting an unredacted letter written by appellant's co-defendant that implicated appellant by name in the murder over appellant's hearsay objection, and in not granting a mistrial after appellant's objections that no limiting instruction could be sufficient.

Introduction

Despite a multi-day trial, a parade of witnesses, and a video of the murder, the evidence against Lorenzo Young ("Young") was scant. The best evidence the State could produce against Young for the murder of Kelly Hunnewell ("Hunnewell") was from the mouths of jailhouse snitches. The State chose to try Young jointly with his co-defendant, Trenton Barnes ("Barnes"). From jail, Barnes wrote a letter to his mother minimizing his participation in the burglary and murder and implicating Young by name as the ringleader. State's Ex. 404. Barnes did not testify. The unredacted letter was admitted over Young's hearsay objection, objection to the limiting instruction, and Young's motion for a mistrial was denied. R. 637, ll. 9 – 22. R. 673, l. 10 – 677, l. 6.

The Evidence Against Young other than the Barnes Letter

In the middle of the night on July 1, 2013, Teresa Baskin ("Baskin") woke up to go to the bathroom. R. 259, ll. 16 – 22. She went to the kitchen to get some water and looked out of her window. R. 259, ll. 19 – 25. She looked across the street where a bar called the Ale House Lounge and a bakery were located. R. 260, ll. 1 – 6. R. 255, ll. 2 – 6. The lights of the bar were off and there were no cars in the parking lot. R. 260, ll. 1 – 6. She could see the light from the open bakery door. R. 260, ll. 1 – 6.

Baskin went back to bed and as "soon as I sat on the edge of the bed, I heard a woman scream." R. 260, ll. 9 – 12. She then heard gunshots. R. 260, ll. 13 – 17. She called the police and they arrived within "two to three minutes." R. 260, l. 24 – 307, l. 10. Baskin looked out the window while she was waiting on the police and saw nobody outside. R. 264, ll. 8 – 13.

The first officer on the scene responded to Baskin's house. R. 248, ll. 14 – 21. It was approximately 3:44 AM. R. 248, ll. 13 – 21. The officer noticed the door to the bakery was open. R. 249, ll. 16 – 19. He walked inside the building and saw a woman "laying on the floor to my right in a pool of blood." R. 250, ll. 6 – 11. The woman was Hunnewell. R. 268, ll. 13 – 14. She was an employee of the bakery. R. 364, ll. 20 – 23. The officer secured the scene and waited on investigators and EMS. R. 250, l. 12 – 253, l. 24. He noticed shell casings in the room. R. 252, l. 17 – 253, l. 7.

The crime scene investigator collected a DVR from the bakery. R. 288, ll. 15 – 22. He also collected six shell casings and projectiles and pieces of projectiles. R. 322, l. 14 – 323, l. 22. Some of the shell casings were .45 caliber GAP. R. 304, l. 9 – 309, l. 10. The other shell casings were .40 caliber. R. 304, l. 9 – 309, l. 10. After viewing surveillance video from the DVR that depicted "the actual shooting incident" the crime scene investigator swabbed items that it appeared the suspects had touched for DNA evidence. R. 326, l. 16 – 335, l. 13. The police collected a large spoon that, from the video, it appeared Hunnewell used to strike one of the suspects and also swabbed the spoon for DNA evidence. R. 333, ll. 7 – 17. The police did not attempt to collect any fingerprints from the scene. R. 344, ll. 17 – 19.

The video from the bakery was played for the jury. R. 446, ll. 9 – 15. State's Exhibit 323. There is no audio. State's Exhibit 323. Four different angles are shown on the bakery video. State's Exhibit 323. One angle shows the door to the bakery. State's Exhibit 323. A man wearing a red hooded sweatshirt walks into the bakery. State's Exhibit 323. Another man wearing a gray hooded sweatshirt follows behind him. State's Exhibit 323. Neither man's face can be seen. State's Exhibit 323. The two men disappear from this camera angle. State's Exhibit 323. While these two men are off-screen, another man wearing a dark hooded sweatshirt can be seen in the bakery's doorway. State's Exhibit 323. He appears to leave. State's Exhibit 323. The man in the red sweatshirt then runs out of the bakery. State's Exhibit 323. The man in the gray sweatshirt follows, running. State's Exhibit 323.

Another camera angle shows the kitchen area of the bakery. State's Exhibit 323. Hunnewell can be seen working. State's Exhibit 323. She is stirring a pot on the stove with a long-handled spoon. State's Exhibit 323. The man in the red sweatshirt comes up behind her and points a gun at her head. State's Exhibit 323. The man in the gray sweatshirt also has a gun and approaches Hunnewell. State's Exhibit 323. Hunnewell fights the two men with the spoon. State's Exhibit 323. Hunnewell is shot and collapses immediately to the floor. State's Exhibit 323. The two men flee. State's Exhibit 323. A police investigator testified that the sweatshirts were "Hollister" brand which she knew because she also wore that brand of clothing. R. 450, ll. 7 – 11. Just as in the other camera angle, neither man's face can be seen. State's Exhibit 323.

The police tested the spoon for DNA. R. 928, ll. 8 – 10. The State's expert testified that the DNA profile was a mixture of "at least three individuals." R. 928, l. 11

– 929, l. 7. Hunnewell, Young, and Barnes could not be excluded from the mixture. R. 928, ll. 11 – 15. Neither could one-third of the planet's population be excluded from the mixture on the spoon; the DNA expert testified that the "probability of randomly selecting an unrelated individual that could have contributed to this mixture is approximately one in three." R. 928, ll. 12 – 18. On cross-examination, the expert admitted that she could not "definitively say that they contributed DNA. I can say that they are included as possible contributors, but I can't definitively say that [they] are contributors." R. 969, ll. 12 – 18.

The State called Donald Moore ("Moore") as a witness and impeached him with a prior statement that Moore testified was a complete lie. R. 570, ll. 10 – 16. Moore testified, "I told them I lied about all that. There wasn't nothing in that confession true." R. 570, ll. 10 – 14. He reiterated, "None of it" was true. R. 570, ll. 15 – 16. Moore said he made up his statement because he thought "word on the street" was that he was a participant in the murder. R. 595, ll. 5 – 7. Moore admitted that he originally told police that Young and Stevenson had been talking about robbing the Ale House. R. 572, ll. 9 – 12. Moore also told the police that he saw Young with "a Glock 40." R. 573, ll. 17 – 25. Moore watched the video from the bakery and originally told police he thought the two men who entered the bakery were Stevenson and Young, with Young wearing the red hoodie. R. 577, ll. 21 – 23. R. 581, ll. 24 – 25. Moore eventually admitted on cross-examination that he made up his story and incriminated Young and Stevenson to clear his own name. R. 594, l. 3 – 595, l. 18.

The police obtained surveillance video from the Ale House, located next door to the bakery. R. 402, ll. 5 – 20. State's Exhibit 325. The bakery can be seen from the Ale

House video. State's Exhibit 325. Two people can be seen standing outside of the bakery. State's Exhibit 325. R. 445, l. 20 – 446, l. 8. They cannot be identified because of the video's poor quality. State's Exhibit 325.

Three jailhouse snitches claimed Young confessed to the murder. The first snitch was Alfred Wright ("Wright"). Wright claimed he met Young one time in the library at the jail. R. 698, ll. 15 – 22. Despite only meeting Wright this one time, Young supposedly told Wright that he, Barnes, and Stevenson originally intended to rob a club, but then robbed the bakery because the club was closed. R. 700, ll. 3 – 20. When the woman in the bakery resisted "and swung a knife at them," Young "shot her two times." R. 700, ll. 5 – 13. Wright had pending charges for murder, first-degree burglary, criminal conspiracy, and armed robbery. R. 703, ll. 9 – 11. As can be seen on the video, Hunnewell never has a knife.

The second jailhouse snitch to testify was Michael Peterson ("Peterson"). Peterson also claimed to have encountered Young in the law library at the jail. R. 788, ll. 3 – 10. According to Peterson, Young confessed to robbing the bakery and shooting Hunnewell after she started to use her cell phone to call the police. R. 788, l. 3 – 789, l. 13. Peterson had a pending charge for murder. R. 799, ll. 15 – 19. As can be seen on the video, Hunnewell never uses a cell phone.

The last jailhouse snitch to testify was Michael Schaefer ("Schaefer"). Schaefer claimed he met Young on several occasions at the jail. R. 873, ll. 17 – 22. Young supposedly told Schaefer that they intended to rob the night club, but when it was closed they entered the bakery. R. 874, ll. 8 – 17. When the woman in the bakery struggled, Young shot her twice and fled the scene. R. 874, ll. 8 – 17. Young supposedly admitted

wearing a red hoodie and jeans. R. 874, ll. 8 – 17. At the time Schaefer supposedly heard the statements from Young, he had three counts of armed robbery pending. R. 879, ll. 5 – 9. Schaefer pled guilty and received a twelve year sentence. R. 879, ll. 12 – 18.

The Barnes Letter

Latoya Barnes was the mother of Barnes and Stevenson. R. 602, ll. 12 – 19. She testified she received a letter from Barnes that was sent from jail. R. 617, ll. 1 – 22. When the State offered the letter into evidence, appellant objected. R. 617, l. 23 – 618, l. 1. Judge Hood sent the jury out and heard argument on the admissibility of the letter. R. 618, l. 2 – 637, l. 22.

The letter was written by Barnes to his mother and blames Young for the robbery and murder. State's Ex. 404. The letter is dated March 31, 2014, and reads in full as it was eventually admitted by the trial court:

> Your Son
> Trenton. B
> Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis **and <u>renzo</u> was on the phone** with his baby mama we was the only two up and **he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick** and then I was like I don't know bruh I'm koolin talking to my lady **and he was like money come first**. I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me **<u>renzo</u> got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing** then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me

> do I have a gun and I said no but I know way one at he said way at and I said I know way Shorty be putting his gun at out side so I took him to it and he pulled out his gun and said which one you won't and I said the small one then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped's and drit bikes and **he was like just a lul lick so we was at the bar down the street** from the house it started raining hard and I was like I'm bout to go home **and he said hold on lul bruh then he was like damm they closed** so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody **he was like come on then we was by the door and I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back **then renzo walk into the place and I went behind him then he grabed her and put the gun to her head** and told me to get in front of her and she swang at me and I closed my and jump I got scared ma I didn't want to do it. I'm sorry. I said it was troy because **I was scared to go to jail with renzo by myself** im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me im going to prison for a long time love you mama I just wanna come home real soon not no grown man.
>
> Love You MAMA
> Your BaBy Boy
> Trenton

State's Exhibit 404 (errors in original) (emphasis added).

Young argued the letter was hearsay and, while possibly admissible as a statement against interest against Barnes, was not admissible against Young.[1] R. 618, ll. 7 – 619, l. 13. R. 620, ll. 6 – 621, l. 17. Counsel argued that, "The statement against interest for Mr. Barnes does not apply to Mr. Young." R. 623, ll. 15 – 21. The State argued the letter was "not hearsay because it's an issue against interest against Mr. Barnes." R. 624, ll. 17 – 19. The solicitor said she would "have no problem with" a limiting instruction. R. 624, ll. 17 – 23.

After extensive argument on hearsay, the trial judge ruled, "The letter is in." R. 627, l. 15 – 637, l. 22. The court ruled that the letter "falls under a hearsay exception, that being 804(b)(3)." R. 637, ll. 9 – 22. "It has an inherent level of trustworthiness and based on the corroborating circumstances, the [letter] is in over Defendant Young's objection." R. 637, ll. 9 – 22.

Citing to Bruton v. United States, 391 U.S. 123 (1986), appellant argued that no curative instruction could remedy the prejudicial effect of the letter against Young. R. 637, l. 25 – 638, l. 5. The trial judge disagreed and directed appellant to draft a limiting instruction. R. 638, ll. 8 – 17. When the jury returned, the letter was admitted into evidence over objection. R. 639, ll. 20 – 25. Latoya Barnes testified the letter was in Barnes' handwriting and that she recognized her son's signature. R. 640, ll. 4 – 7.

The State's next witness was a handwriting expert. R. 653, l. 22 – 655, l. 22. The expert read the letter to the jury. R. 657, l. 23 – 661, l. 2. Using "blow-ups" of the letter and handwriting samples from Barnes, the expert testified that Barnes wrote the letter. R. 662, l. 8 – 669, l. 4.

Following the expert's testimony, appellant renewed his objection and moved for a mistrial. R. 673, l. 6 – 675, l. 20. Again citing Bruton, trial counsel also explained that while he wanted a limiting instruction, he objected to its sufficiency because it was insufficient to cure the prejudice. R. 674, l. 11 – 675, l. 22. The trial judge denied the mistrial motion and stated he would give the limiting instruction. R. 676, ll. 10 – 18. The trial judge gave the following limiting instruction when court began the next morning:

[1] Appellant did not argue that the letter was testimonial for Confrontation Clause purposes under Crawford v. Washington, 541 U.S. 36 (2004). Tr. 668, l. 16 – 669, l. 21.

> Members of the jury, the State has introduced a letter purported to be written by Trenton Barnes. Now, you heard about this letter last night. The admission of this evidence, the admission of the letter is only to be considered against Trenton Barnes. This evidence cannot be considered against Mr. Young at all.
>
> You are not to weigh this evidence whatsoever when considering if the State has met their burden of proof against Lorenzo Young, so that's a further instruction that I'm giving you on things that are not evidence. Essentially the letter would not be evidence against Mr. Young, and so you are to disregard the letter in regards to Mr. Young's involvement.

R. 696, l. 22 – 697, l. 11.

Discussion

The trial judge erred in admitting the Barnes letter and in not granting a mistrial when the limiting instruction was wholly insufficient. The trial judge admitted the letter under Rule 804(b)(3). Rule 804(b)(3), SCRE. Under this exception to the hearsay rule, even if a witness is unavailable, a statement against the declarant's interest is admissible. Rule 804(b)(3), SCRE. Included as a statement against interest is a statement that subjects the declarant to criminal liability. Rule 804(b)(3), SCRE.

While the Barnes letter would satisfy these grounds for admissibility in a trial solely against Barnes, it is not admissible against Young. In a case cited by appellant to the trial court, the United States Supreme Court singled out statements made by a co-defendant as unreliable and inadmissible in these circumstances. Williamson v. United States, 512 U.S. 594 (1994). In Williamson, a man named Harris was arrested with a car full of cocaine. Id. at 596. Shortly after his arrest, Harris told police the cocaine belonged to Williamson and he was transporting the cocaine to Atlanta for Williamson. Id. at 596-97. During Williamson's trial, Harris refused to testify. Id. at 597. The government called the police officer to whom

Harris had confessed and implicated Williamson. Id. at 597-98. The district court ruled the officer could testify about Harris' statements under Rule 804(b)(3). Id.

The United States Supreme Court reversed. Id. at 598-605. The Court observed that the "fact that a person is making a broadly self-inculpatory confession does not make more credible the confession's non-self-inculpatory parts." Id. at 599. "One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature." Id. at 599-600. "And when part of the confession is actually self-exculpatory, the generalization on which Rule 804(b)(3) is founded becomes even less applicable." Id. at 600. "The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory because it is part of a fuller confession, **and this is especially true when the statement implicates someone else."** Id. at 601 (emphasis added).

Quoting Lee v. Illinois, 476 U.S. 530, 541 (1986), the Williamson Court stated, "'[T]he arrest statements of a codefendant have traditionally been viewed with special suspicion. Due to his strong motivation to implicate the defendant and exonerate himself, a codefendant's statements about what the defendant said or did are less credible than ordinary hearsay evidence.'" Williamson at 601. In concurrence, Justice Scalia noted, "A person arrested in incriminating circumstances has a strong incentive to shift blame or downplay his own role in comparison with that of others, in hopes of receiving a shorter sentence and leniency in exchange for cooperation." Id. at 607-08 (Scalia, J., concurring). See also Lilly v. Virginia, 527 U.S. 116 (1999).

Our Supreme Court interpreted Rule 804(b)(3), Lilly, and Williamson in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). In Fuller, the Court ruled a third-party accomplice's confession that implicated the defendant was not admissible. Fuller at 243-45, 523 S.E.2d at 172. The Court stated, "The U.S. Supreme Court has held that third-party statements such as the one involved in this case are inherently unreliable." Id. Fuller distinguished the Federal Rules of Evidence as containing a "catchall exception" which South Carolina has expressly chosen not to adopt. Id.

The Barnes letter contains all of the problems recognized by Williamson and Fuller. In the letter, Barnes tries to downplay his own role. State's Exhibit 404. He repeatedly portrays himself as reluctant to do anything with "renzo." State's Exhibit 404. The plan is Young's. State's Exhibit 404. The guns are Young's. State's Exhibit 404. The decision to go into the bakery is Young's. State's Exhibit 404. Just as observed by Justice Scalia in Williamson, Barnes tries to minimize his role and blame Young.

Barnes also has another powerful motivation that makes the letter unreliable: protecting his brother, Stevenson. The letter purports to exonerate Stevenson. State's Exhibit 404. In the letter, Stevenson merely shows up as Young is entering the bakery and is waving at Barnes. State's Exhibit 404. Barnes retracts earlier statements implicating his brother because he was scared of going to jail with "renzo" by himself. State's Exhibit 404. Because of the triple motivation of minimizing his own role, blaming Young, and exonerating his brother, the Barnes letter is inherently unreliable and should not have been admitted in Young's trial.

The State's decision to try Young and Barnes together created this problem that the trial judge's limiting instruction could not solve. There can be no dispute that the

letter fully blames Young for the murder. The letter was not redacted. The court's limiting instruction was insufficient—as any limiting instruction would have been.

In Bruton v. United States, 391 U.S. 123 (1986), the trial court gave a limiting instruction that "a codefendant's confession inculpating the defendant had to be disregarded in determining his guilt or innocence." Bruton at 123-24. In reversing, the Court held that a limiting instruction was insufficient when dealing with a codefendant's confession in a joint trial. Id. at 130-32. The Court held:

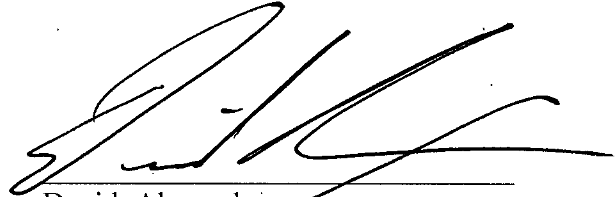
> In joint trials, however, when the admissible confession of one defendant inculpates another defendant, the confession is never deleted from the case and the jury is expected to perform the overwhelming task of considering it in determining the guilt or innocence of the declarant and then of ignoring it in determining the guilt or innocence of the any codefendants of the declarant. A jury cannot segregate evidence into separate intellectual boxes. It cannot determine that a confession is true insofar as it admits that A has committed criminal acts with B and at the same time effectively ignore the inevitable conclusion that B has committed those same criminal acts with A.

Id. at 130-31 (internal quotations omitted). The exact problem the Court held could not be solved with a limiting instruction in Bruton exists in this case. The jury could not reasonably be expected to ignore the Barnes letter with respect to Young's guilt. The prejudice to Young was enormous. See, e.g. State v. Henson, 407 S.C. 154, 754 S.E.2d 508 (2014) (holding that even a redacted confession by a codefendant mandated reversal). The trial judge should have recognized that the extreme prejudice to Young could not be cured by any limiting instruction and granted a mistrial after the letter's admission. This Court should reverse.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

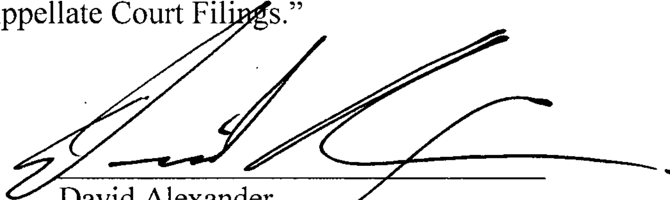
ATTORNEY FOR APPELLANT

This 3rd day of February, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 3rd, 2016



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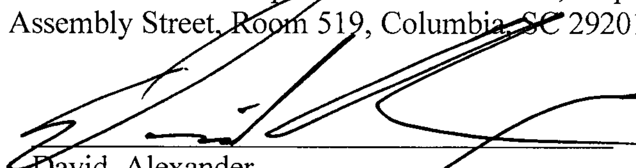
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of February, 2016.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2016

_______________ (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.