ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SEP 16 2015
SC Court of Appeals

Appeal from Richland County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURICE ALPHONSO ROBERTS, JR.,

APPELLANT

APPELLATE CASE NO. 2014-000468

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

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2.

Whether appellant's case should be remanded for resentencing where the court failed to adequately consider the fact appellant was a juvenile at the time of the crime, and it imposed a de facto life sentence where appellant's relative culpability should have been considered during an individualized sentencing hearing?

STATEMENT OF THE CASE

Appellant Maurice Roberts was indicted by the Richland County Grand Jury for the offenses of murder, burglary in the first degree, two counts of attempted murder, and one count of attempted robbery. R. 720 – R. 729.

Appellant's case was called to trial on September 24, 2014, before the Honorable A. Doyet Early, III, and a jury. Tivis C. Sutherland, III, represented appellant. Catherine "Luck" Campbell, Nicole Simpson, and Meagan Walker were the assistant solicitors. R. 1.

On February 28, 2014, the jury found appellant guilty on all counts. R. 669, l.20 – 670, l. 12. Judge Early sentenced appellant to forty-five years' imprisonment for murder, forty-five years imprisonment for burglary in the first degree, twenty years imprisonment on the two attempted murder charges, and twenty years' imprisonment for the attempted robbery convictions, all concurrent. R. 685, ll. 6-18.

This appeal follows:

ARGUMENT

1.

The court erred by allowing incarcerated inmate, Demetrice James, to testify at the behest of the state that he was transported to court with appellant since any relevance this testimony had was substantially outweighed by its unduly prejudicial effect, since it impermissibly informed the jury that appellant was incarcerated during his trial, and thereby diluted the presumption of innocence.

Relevant Facts

Fifty-four-year-old Chandler Davis lived on Williamsburg Drive in Columbia, South Carolina. He lived with his wife his stepsons, Trenton and Troy Scott, and Brandon Jones. R. 48, l. 22-49, l. 17. Mr. Davis testified that he and his wife at times would let troubled children stay with them in an attempt to help them until their situation improved. When Vincent Nelson, Jr., "J School" was a minor, the Davis family let Nelson live with them for a time "to try and get him off the streets ... and back on track." R. 49, l. 15-51, l. 17.

On January 25, 2013, the family was surprised when Vincent Nelson showed up at their house late that evening. They had not seen Nelson in months. "He kind of disappeared." However, Mr. Davis offered: "I trusted him." R. 51, ll. 6-24. The decedent, Brandon Jones, was also at the Davis house that evening. In the basement of the Davis house, they had a recording studio for the young people, and his wife also ran a beauty salon out of the house. R. 50, ll. 2-9.

The state's evidence showed that Vincent Nelson had planned a robbery and the stereo equipment that evening, and he elicited the help of the seventeen-year-old appellant in

the scheme. The state, of course, maintained that appellant was an equal actor, in fact the shooter, in this case.

Mr. Davis remembered that while he was upstairs in his bedroom that evening that he heard "glass breaking, and I said, what's my boys doing down there breaking now . . . I didn't really pay it no attention that second, you know, too much like that. And, all of a sudden, I heard a gunshot, gunshot. Then I heard about three or four more . . . and so I jumped up" and went downstairs. R. 52, l. 23-53, l. 6.

Twenty-two year-old Joshua Williams testified he met Trent and Troy Scott when he was sixteen-years-old, and they shared a mutual interest in music. They invited Williams over to their recording studio in the basement of their home. R. 30, l. 13-31, l. 25. Williams remembered on the night of January 25, 2013, he was with the Scott brothers and Brandon Jones, and Mr. and Mrs. Davis. They were downstairs in the basement when Vincent Nelson, Jr. came over unexpectedly. Mr. Davis let Nelson into the home. R. 32, l. 3-34, l. 19.

Williams recalled that Nelson was acting real "odd." Williams described Nelson as "lifeless," and he said Nelson "kept pacing back and forth" talking on his cell phone. Williams offered that it was unusual for Nelson even to have a cell phone. R. 34, l. 11-35, l. 20.

Williams testified that Nelson asked Brandon Jones for a cigarette, and they went outside to smoke, since smoking was not allowed inside the house. R. 35, l. 18-38, l. 5. While they were outside the house, Williams remembered three other young men walked past them. One of these young men was staring at him. The three men suddenly attacked him, and Williams testified that he was "pistol whipped." A gun or guns were pulled, and

Brandon Jones was on the ground, saying: "Don't shoot me. Don't shoot me." R. 39, l. 11-42, l. 4.

Williams testified that a couple of the young men forced their way into the house, and then he heard gunshots. "And then I felt a jolt of pain, and that's when I didn't hear Brandon no more, and then everybody ran. All I saw was eight pair of shoes run up the hill, and Vincent Nelson, Jr. was with them." Williams also remembered Nelson yelling: "Let's go, let's go" after Williams heard the gunshots. R. 42, l. 25 – 43, l. 22.

Trenton Scott also testified that Nelson showed up unexpectedly that evening. R. 121, l. 24 – 125, l. 12. Trenton also maintained that Nelson was acting "odd," and that Nelson uncharacteristically had a cell phone that evening that he was using to make calls. Scott said: "Vincent Nelson kept on pressuring Brandon to come out for a cigarette smoke." R. 126, ll. 2-23.

Trenton remembered that once outside appellant Roberts "ran in on me." Trenton said he did not know appellant, but he said he could identify appellant because he did not have anything covering his face. Trenton testified that appellant pointed a gun at his head. R. 127, l. 10 – 129, l. 7.

Trenton told the jury that appellant hit him in the head with the gun and he remembered that Demetrius James was also involved. Trenton remembered the scuffle that followed over the gun, and he claimed appellant passed the gun to Demetrius James, "and then I started to fight Demetrius." R. 129, l. 3 – 131, l. 15.

Trenton said he forced appellant "off the floor, and I held him in a full Nelson so just in case he [James] did shoot, he was going to hit him [appellant]." Trenton offered that

he was able to physically throw "appellant into Demetrius," and then they were able to barricade the door to the house closed. R. 132, l. 1-136, l. 9.

Trenton remembered that during the fight, five shots were fired. Trenton was injured at the time: "I'm basically bleeding all the way through the hallway to my parent's room" which is where he was when he heard the gunshots. 911 was called. R. 136, l. 1-137, l. 25. Trenton identified appellant as one of the men involved in the robbery attempt. Trenton testified that he only tried to protect himself from Demetrius James and appellant that evening. R. 144, l. 18-148, l. 23.

Jwaun Duckett knew appellant from the neighborhood and from school. He was at appellant's apartment in Hammond Village off Broad River Road on the night of this incident. R. 183, l. 16-185, l. 22. Jwaun testified that he also knew Demetrius James and Deshawn McClary from "the neighborhood." They had a "rap group" called the "600." Jwaun testified that McClary, James and Nelson were all in the rap group. He later asserted that appellant was not part of their rap group. R. 187, ll. 3-23.

Jwaun testified that he heard appellant talking to Nelson that evening, and Nelson was saying "they got a lick to go do at a studio or something like that." Jwaun said the plan to rob the studio that evening was Nelson's. Jwaun claimed that appellant participated in the robbery attempt of the studio that evening. R. 193, l. 3-204, l. 8.

Jwaun also testified that he had observed a gun at appellant's Hammond Village apartment about a year ago prior to this incident. Appellant told him the gun did not belong to him -- "he was holding it for somebody." R. 203, l. 18-207, l. 12. Jwaun testified that after the incident appellant denied he shot anyone. Demetrius James was named as the

shooter. Jwaun said James was apparently bragging in the jail after his arrest that he was the shooter that evening. R. 204, l. 9-210, l. 13.

The men who testified as state's witnesses, including Jwaun, had extensive criminal records. R. 211, l. 20-212, l. 20. The state called Demetrius James as their witness. James testified that he had known appellant for about two years. James said he was involved in music, and that "I produce beats from out of my studio at home. I go to a studio on Decker Boulevard to do music." R. 263, l. 22-266, l. 20.

James testified that on January 25, 2013, he saw Nelson and appellant get into an altercation at the Davis house. James said he was only trying to "help out" appellant to prevent him from getting hurt in the fight. Appellant was only 5'3.[1] James said appellant pulled out a gun during the fight, but the gun fell to the ground. James said he grabbed the gun and "the next thing I know, the gun was being snatched from me, and then that's when the gun went off, after it was snatched from me and everything." James said he did not see appellant get possession of the gun again. R. 271, l. 8 – 275, l. 14.

However, at another point, James said he saw appellant shoot the gun one time. James said he heard more gunshots and he saw a man lying on the ground. James ran "all the way back to River Drive . . . I just lay on the couch kind of getting my thoughts together, and then I'd drift off to sleep." R. 275, l. 4 – 276, l. 25.

Let the jury know appellant was incarcerated at the time of his trial

The assistant solicitor had James acknowledge that he was facing up to life imprisonment for murder, and fifteen years to life imprisonment for burglary in the first

[1] This information is a matter of public record that this Court can take judicial notice of from the South Carolina Department of Corrections Incarcerated Inmate Locator.

degree. The assistant solicitor also had James testify there were no offers or deals offered in return for his testimony. However, James admitted that he hoped for help from the state given his testimony against appellant. R. 282, l. 8-284, l. 16.

The solicitor then asked James about any threats that were made against him, and if he was actually transported to court that day with appellant. At this point, defense counsel Sutherland objected, and a bench conference was held. Defense counsel argued this testimony was unduly prejudicial because it apprised the jury that appellant was incarcerated at the time of his trial. The judge overruled that objection. R. 284, l.17-285, l. 6.

James then testified that he was transported to court with appellant the prior day. James also testified that appellant made a veiled threat to him if he testified against him. R. 285, ll. 1-23.

Other evidence

Vincent Nelson also testified for the state. Nelson claimed that he was the "guinea pig" in the robbery because the others knew that he could get inside the house because he knew the family. R. 303, l. 22 - 307, l. 9. Nelson said that DeShawn McClary, Demetrice James, and appellant were also involved in the robbery attempt that night. R. 306, l. 17 - 310, l. 6. Nelson maintained once he was inside the Scott's home, he called the others to let them know that the robbery could go forward. R. 310, l. 7 - 315, l. 5.

Nelson testified that he went outside with Brandon Jones and Josh Williams that evening to smoke a cigarette. McClary, James, and appellant "came down the hill" once they were outside, and that was when the altercations and gunshots occurred. Nelson said he heard two gunshots at first, and then a couple of minutes later he heard five or six more gunshots. He said he ran back to appellant's apartment at Hammond Village. R.

316, l. 15 – 329, l. 3. Nelson found out the following day that his "friend Brandon had been murdered." R. 329, ll. 4-8. Nelson said a .45 caliber gun was used on the night of the murder, and the state offered evidence attempting to link that gun to appellant. R. 329, l. 21 - 330, l. 22.

Decedent Jones was shot five times. McClary claimed that the .45 caliber gun used that evening belonged to appellant. R. 411, l. 9-12; R. 447, l. 2; R. 448, l. 9; R. 455, l. 6-8. Richland County criminal investigator James Standin Smith testified that Vincent Nelson was identified early on as the prime suspect in the murder. R. 573, l. 17 - 575, l. 17. The police searched several places for Nelson before he was arrested. Smith claimed that Nelson's statement, along with that of Jwaun Duckett, provided probable cause to arrest appellant. However, Smith maintained that appellant was ultimately arrested based on his own statement, and the fact that he had a "black eye" which matched other descriptions of the fatal altercation. Smith testified his review "of the evidence in this case" revealed that "it was Maurice Robert's gun." R. 578, l. 25 - 579, l. 9; R. 580, l. 12 - 582, l. 6. On cross-examination, Smith opined that he found the testimony of Nelson, McClary, and James credible. R. 582, ll. 16-22[2].

In his statement to police appellant denied that he was the shooter. Appellant admitted he was at the scene of the crime that evening. Appellant also denied that he attempted to cover up the incident. R. 515, l. 6 - 520, l. 16.

Discussion

[2] There was also no objection to testimony that clothes found hidden at Hammond Village belonged to appellant. In addition, there was no objection to a jury instruction prompted by the solicitor that there did not have to be any specific intent to kill for the crime of attempted murder. R. 663-665.

Defense counsel properly objected to the state placing testimony before the jury that clearly showed appellant was incarcerated at the time of his trial. The United States Supreme Court, this Court, and courts of other jurisdictions have clearly recognized prejudice from the dilution of the presumption of innocence when a jury learns from evidence or other factors that the defendant on trial is incarcerated.

For example, in Estelle v. Williams, 525 U.S. 501, 504 (1976), the United States Supreme Court observed that "courts have, with few exceptions, determined that an accused should not be compelled to go to trial, imprisoned or jail clothing because of the possible impairment of the presumption [of innocence] so basic to the adversary system." The Court in Estelle recognized that while physical restraint or shackles may at times be unavoidable because of a defendant's disruptive conduct, such as in Illinois v. Allen, 397 U.S. 337 (1970), that compelling an accused to wear jail clothing, furthered no essential state policy in that case.

Further, a defendant being tried in prison garb, introduces an unacceptable risk of impermissible factors coming into play before the jury. The prison clothes are a constant reminder that the defendant was without the economic means to post bond and/or that he posed a risk of violence or flight (flight being evidence of guilt).

Defense counsel recognized that the jury hearing inmate, Demetrius James, testify that appellant was transported with him from the detention center to court would be very prejudicial to appellant. This testimony did not serve any possible state interest.

To illustrate that point, the record in this case reveals before the jury was ever allowed into the courtroom, the trial judge properly made arrangements to ensure that the jury would not see that appellant's feet were shackled while at the defense table. There were

also several references in the record which show appellant was identified as wearing a yellow shirt, and being in street clothing during the trial.

There was simply no reason for the state to elicit this testimony from inmate James that appellant was transported to trial with him other than to prejudice appellant in the eyes of the jury because he was incarcerated at the time of trial. All efforts to prevent the dilution of the presumption of innocence by preventing the jury from seeing appellant shackled or in prison garb were destroyed by the state's deliberate and successful effort to place this testimony through James before the jury so the jury would know that appellant was incarcerated during his trial.

In Allen v. State, 248 Ga.App. 79, 545 S.E.2d 629 (2001), the court held that where physical restraints were necessary and observed by the jury, the trial court must give a curative instruction that the restraints on the defendant had no bearing on his guilt or innocence, and should not be considered by the jury during deliberations. It is apparent that a curative instruction is not possible, where, as here, the trial court overrules the defendant's objection to the evidence showing the defendant is incarcerated during his trial.

In State v. Gonzales, 129 Wash.App. 895, 897, 120 P.3d 645, 647 (Wash 2005), the court held that a defendant had the right to appear in court without "manifestations that he is being held in jail." The Court elaborated that "an indigent criminal defendant also has the same right to the unqualified presumption of innocence as one who can afford to post bail." Id. at 897, at 647.

In Gonzalzes the trial judge explained to the jury that all persons who could not afford bail were transported to and from court, and handcuffed outside the presence of the jury. The trial judge cautioned the jurors that the fact the defendant was in custody had no

bearing on its determination of whether he was innocent or guilty. The Court held that all criminal defendants were entitled to stand "equally before the bar of justice in every American court . . . This means that indigent defendants are entitled to the same criminal procedure as that received by persons of means." State v. Gonzales, 129 Wash.App. 895, 903, 120 P.3d 645, 650 (Wash 2005), *citing* Griffin v. Illinois, 351 U.S. 12, 17 (1956). The Court found that if the defendant had the means to post bail he would not have had to endure the indignity of this instruction The Court held it was a violation of his due process rights, and that when a trial right as fundamental as the presumption of innocence was abridged, reversal was required.

Here, the solicitor succeeded in having the jury learn that appellant was transported to court with a prisoner, and it was highly prejudicial, as defense counsel argued, because the jury now knew appellant was incarcerated during his trial. To add absolute insult to injury there was zero state interest involved that required that the jury unfortunately learn that appellant was incarcerated during his trial where it is clear beyond cavil that courts have recognized the obvious prejudice from such evidence. Cf. State v. Tucker, 320 S.C. 206, 264 S.E.2nd 105 (1995), (the use of shackles, not visible to the jury, was not unduly prejudicial particularly where they were warranted by the defendant's prior escapes and conduct, and the trial judge also took extra precautions to minimize any discomfort to the defendant, and any prejudice to the defense. The judge further offered to instruct the jury that it had informed the defendant that he did not have to stand when the judge entered or left the courtroom).

The state not only gained the prejudice to appellant it sought from the admission of this incompetence evidence that appellant was incarcerated during his trial but any

relevance this evidence possibly had was substantially outweighed by its unduly prejudicial effect. See, Rule 403, SCRE.

This evidence was gratuitous, and it was not harmless in this case. The evidence impermissibly diluted appellant's fundamental right to the presumption of innocence, and there was disputed evidence as to who was the shooter in this case, and it was certainly far from a foregone conclusion that the shooting in this case was the "natural and foreseeable" result of the plan hatched by the older Vincent Nelson, Jr. Appellant should be granted a new trial.

2.

Appellant's case should be remanded for resentencing where the court failed to adequately consider the fact appellant was a juvenile at the time of the crime, and it imposed a de facto life sentence where appellant's relative culpability should have been considered during an individualized sentencing hearing.

Relevant Facts

Appellant was only seventeen-years-old at the time of the crime in this case. R. 676, ll. 10-15. Defense counsel said although there was no way to determine who the jury thought was the actual shooter, it was counsel's firm belief that appellant "did not shoot either of those young men..." R. 676, ll. 14-19.

When appellant began to apologize to the family for their loss, defense counsel told him "don't go further." R. 676, ll. 6-15. The judge then heard the tragic evidence in aggravation regarding the loss of the victim. R. 677, l. 17 – 683, l. 13.

The judge then told appellant that this murder case about "as senseless as one gets . . . involving a "plan and escapade to steal recording equipment from a family that would have given it to you . . ." R. 683, l. 16 - 685, l. 18. The judge then imposed sentences of forty-five years imprisonment on appellant. R. 685, ll. 6-18.

Discussion

In Aiken v. Byars, 410 S.C. 534, 765 S.E. 2d 572 (2014), our Supreme Court accepted a case in its original jurisdiction from a class of fifteen inmates who were sentenced to life imprisonment for crimes committed while they were juveniles. Some of

the inmates in the class had been sentenced to life imprisonment where that sentence was discretionary.

In Aiken v. Byars, the Supreme Court noted that the United States Supreme Court in Miller v. Alabama, __U.S.__, 132 S.C. 2455 (2012), held that life without parole sentences for juveniles who committed homicides violated the Eighth Amendment where the sentencing court failed to hold an individualized sentencing hearing considering "children's diminished culpability and heightened capacity for change." The Court in Aiken v. Byars, recognized that the United States Supreme Court in Miller v. Alabama, did not expressly extend its holdings to states such as South Carolina where a sentence of life imprisonment was not mandatory. However, absent an individualized sentencing hearing, the holding in Miller is logically applicable to life sentences imposed where not mandatory.

In Aiken v. Byars noted that many of the defendants involved in the class in that case had short sentencing hearings where defense counsel mentioned the age of the defendant at the time of the crime, and in some cases, there was a brief discussion of the defendant's life prior to the commission of the crime.

The present case involves a *de facto* sentence of life imprisonment. At the truncated sentencing held immediately after the jury verdict in this case, there was a mention of appellant being a minor at the time the crime was committed. Defense counsel offered his opinion that appellant was not the shooter in this case, and referenced appellant's "relative culpability."

The sentence in this case, forty-five years' imprisonment was a de facto live sentence. In State v. Null, 836 N.W2nd 41 (Iowa 2013), the Iowa Supreme Court held that the principle of Miller v. Alabama applied to juveniles sentenced to a lengthy term of years imprisonment that in effect, constituted a *de facto* life sentence.

The Iowa Supreme Court made it clear that its holding was based on the Iowa Constitution's ban on cruel and unusual punishment, but the court added that the application of Miller v. Alabama should not turn on the finer points "of actuarial sciences in determining precise mortality dates, otherwise an offender sentenced to a lengthy term-of-years would be **worse off than an offender sentenced to life imprisonment without parole who had the benefit of an individualized hearing under Miller.**" State v. Null, 836 N.W.2d at 72. (emphasis added).

The Fourth Circuit recognized a *de facto* life sentence in United State v. Pileggi, 703 F..3d 675, 678 (4th Circuit 2013), where the District Court imposed, a "*de facto* life sentence" of fifty years imprisonment. See, also, United States v. Garcia, 754 Fed.3d 460, 474 (7th Circuit 2014).

Appellant's sentence of forty-five years imprisonment in this case was a de facto life sentence because the forty-five year sentence is a term-of-years sentence which fails to offer the juvenile appellant an opportunity to obtain release before the end of his expected life span. South Carolina's life expectancy table is listed in S.C. Code § 19-1-150. However, common sense and available statistics demonstrate that a life expectancy for a person incarcerated is much less, particularly for a black male.

For example, the United States Sentencing Commission uses a sentence of four hundred and seventy months (39 years and 2 months) to identify sentences in which a de

facto life sentence was imposed, which is consistently the average life expectancy of a federal criminal offender. Patti B. Saris, et al., U.S. Sent. Comm'n, Life Sentences in the federal system. (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf.

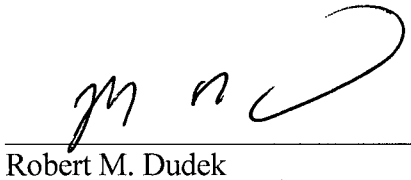
Further, in Bearcloud v. State, 334 P.3d 132, 142 n.7 (Wyo. 2014), the defense presented evidence that the life expectancy of an incarcerated black male was fifty-six years. The forty-five year prison term imposed on appellant here was a *de facto* life sentence given the rigors of prison life despite the fact this record shows he was juvenile who committed this offense under the dominate older defendant, Nelson. It is a classic offense involving the poor judgment of youth, and the inclination to be a follower.

Here, it was noted in passing, at sentencing within minutes of the jury verdict, that appellant was only seventeen-years-old at the time of the fatal incident. Absolutely no individualized hearing was held on the mitigating factors found attendant to juveniles discussed in Miller v. Alabama and Aiken v. Byars. Appellant's case should be remanded for an individualized resentencing hearing.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Richland County Court of General Sessions for a new trial. In the alternative, appellant's case should be remanded to the Richland County Court of General Sessions for resentencing pursuant to the principles of Miller v. Alabama and Aiken v. Byars.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

September 16, 2015

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APPELLATE CASE NO. 2014-000468

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 Kaycie S. Timmons, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of September, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of September, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.