

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
D. Craig Brown, Circuit Court Judge

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DEC 01 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BLATON WAKEEM SMITH,

APPELLANT

APPELLATE CASE NO. 2014-001769

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, whether the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana?

STATEMENT OF THE CASE

On January 31, 2013, a Marion County grand jury indicted appellant for murder, discharging a firearm into a dwelling, a weapons charge, and four counts of attempted murder. R. 622 – 623. Three others were charged in the same indictment. R. 622. On August 6, 2014, appellant was tried before the Honorable D. Craig Brown and a jury. R. 1. Appellant was tried with his co-defendant, Shaheed Hayes. R. 1. Ed Clements represented the State. R. 1. Steven DeBerry represented Shaheed Hayes. R. 1. Joshua Bailey represented appellant. R. 1. Shaheed Hayes was convicted of all charges. R. 617, 1. 22 – 619, 1. 4. Appellant was acquitted of discharging a firearm into a dwelling, but convicted of the remaining charges. R. 619, 1. 5 – 620, 1. 18. Judge Brown sentenced appellant to four terms of thirty years' imprisonment for attempted murder and life imprisonment for murder. R. 621, 11. 15 – 21. Judge Brown imposed each of these sentences consecutively. R. 621, 1. 22. This appeal follows.

ARGUMENT

Where a witness told a psychiatrist that he smoked marijuana immediately before giving police a statement implicating the defendant, the trial judge erred when he refused to allow the defense to cross-examine the witness with his statements that he suffered from delusions when he smoked marijuana.

Relevant Facts

On the night of April 12, 2012, police responded to a shooting call at a trailer in Marion County. R. 28, ll. 13 – 20. The first officer on the scene saw “a bunch of bullet holes in the trailer” and shell casings on the highway. R. 30, ll. 6 – 18. Five to seven people were at the scene. R. 76, ll. 9 – 11. The officers did not make a record of the people at the scene. R. 35, ll. 14 – 20. One man, Christian Drawhorn a/k/a “Murder” (“Drawhorn”), suffered one wound to his arm and a fatal gunshot wound to his torso. R. 279, l. 23 – 280, l. 18. R. 29, ll. 10 – 17. R. 314, ll. 3 – 7. Drawhorn was the only person injured.

The trailer where the shooting took place was used for illegal gambling and selling drugs. R. 286, ll. 17 – 20. The trailer belonged to Gavin Graves (“Graves”). R. 285, ll. 10 – 12. It was located on a major highway, Highway 501. R. 285, ll. 1 – 2. A total of five men were in the trailer. R. 285, ll. 22 – 24. They were playing cards, smoking marijuana, drinking alcohol, and selling drugs. R. 292, ll. 12 – 19. R. 308, l. 17 – 21. Graves recalled two or three people coming by that night to buy drugs. R. 308, ll. 17 – 21. When the police searched the trailer after the shooting, they found crack cocaine and marijuana. R. 301, ll. 8 – 19.

Shortly after midnight, the men in the trailer heard a soft knock at the door. R. 292, ll. 20 – 24. When they looked out the door, no one was there. R. 293, ll. 1 – 10. About three minutes later, the trailer was riddled with bullets. R. 293, ll. 1 – 10. None of the men left the trailer until after the shooting had stopped and could not identify any person or vehicle involved in the shooting.

Appellant Blaton Smith (“Smith”) denied having anything to do with the shooting. R. 222, ll. 10 – 12. Smith voluntarily went to the police office and gave a statement. R. 223, l. 5 – 224, l. 6. The police admitted they had no physical evidence linking Smith to the shooting. R. 231, l. 24 – 232, l. 3.

The State’s entire case rested on the testimony of two co-defendants. The first to testify was Jaime Williams, a/k/a “Lil Boosie” (“Williams”). R. 393, l. 20 – 394, l. 1. Williams was also charged with murder and four counts of attempted murder. R. 419, ll. 14 – 18. Williams denied hoping for a deal from the State. R. 420, ll. 6 – 9. Williams’ trial was originally scheduled prior to appellant’s trial. R. 421, ll. 13 – 23. Williams admitted that he changed his story the week before appellant’s trial. R. 421, ll. 9 – 23. Williams claimed he only changed his story because he wanted “to tell the truth about it.” R. 421, ll. 22 – 23.

Williams claimed at trial that he lied to police in his original statement. R. 421, ll. 2 – 6. In his original statement, Williams claimed that Willie Bethea (“Bethea”) was driving a car containing Williams, Smith, and Shaheed Hayes (“Hayes”). R. 420, l. 20 – 423, l. 21. Smith and Hayes were in the back seat in this version. R. 421, ll. 2 – 4. Smith shot at the trailer in this version. R. 411, ll. 14 – 16.

In the version Williams gave the jury at trial, Smith was driving with Bethea in the front seat, Williams sitting behind Smith and Hayes sitting behind Bethea. R. 397, l. 18 – 399, l. 11. They were traveling from Latta down Highway 501 toward Marion. R. 418, ll. 1 – 6. The trailer was on their right. R. 418, ll. 4 – 6. Hayes saw a truck belonging to Derrick Wilson a/k/a “Eyebrows” (“Wilson”). R. 286, ll. 2 – 3. R. 400, ll. 23 – 25. They turned around and slowed down in front of the trailer. R. 402, ll. 2 – 13. Williams, Hayes, and Bethea all shot into the house from their car. R. 402, l. 14 – 404, l. 19.

Interestingly, Williams claimed he fired from over the top of the car. R. 404, ll. 18 – 19. He claimed he was sitting behind the driver. R. 397, l. 18 – 399, l. 11. With the trailer on the right as they traveled from Latta, this firing position would have made sense. But given Williams’ testimony that they turned around, Williams, had he been telling the truth, could have just fired directly from his window. When cross-examined on this point, Williams became frustrated and said, “Man, look, man, I was shooting over the top of the car.” R. 423, ll. 11 – 14. When defense counsel continued to press Williams, Williams responded, “Man, we came – I don’t know highways that good. I ain’t going lie to you, but I know what I did and I’m admitting to what I did.” R. 423, ll. 15 – 18.

In Bethea’s version, the men drove straight to the trailer and opened fire. R. 465, l. 1 – 468, l. 21. The men were “riding down the road and we stopped in front of the trailer.” R. 466, ll. 2 – 3. Smith was driving. R. 466, ll. 18 – 19. At no point did Bethea mention seeing Wilson’s car and turning around to go back to the trailer. R. 493, ll. 3 – 5. Bethea claimed he did no shooting he did not shoot at the trailer. R. 470, ll. 20 – 23.

Bethea admitted he knew that he was facing the possibility of life in prison. R. 488, ll. 18 – 20.

Bethea gave a statement to police the same day he was arrested. R. 484, ll. 10 – 22. On prompting from the solicitor, he claimed he told the police the same story when he was arrested that he told the jury. R. 484, ll. 20 – 22. During cross-examination, Bethea admitted he was a schizophrenic and had been institutionalized in a mental hospital. R. 511, l. 13 – 512, l. 11. The State objected to this line of questioning on relevance grounds. R. 513, ll. 2 – 3. The trial judge sent the jury out of the courtroom. R. 513, l. 24.

Smith proffered that during Bethea's psychiatric evaluation, he told the physician that he smoked marijuana thirty minutes before he was arrested. R. 516, ll. 8 – 11. Bethea made statements to doctors in the past that he had visual hallucinations when smoked marijuana and became delusional. R. 516, ll. 2 – 3. R. 517, ll. 3 – 5. The trial judge refused to allow this cross-examination. R. 517, ll. 18 – 22.

Discussion

The refusal to allow impeachment of Bethea that he smoked marijuana and was possibly delusional when he gave his version of events to police was error that requires reversal. The impeachment would have related to Bethea's capacity, bias, and credibility. Rule 608, SCRE.

The Sixth Amendment guarantees the right to fully cross-examine adverse witnesses. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004). The right to confront and cross-examine witnesses are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973). The right of cross-examination is implicit in the

constitutional right of confrontation. Id. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination. State v. Gillian, supra. The primary interest secured by the Confrontation Clause of the Sixth Amendment is the right to cross-examination. State v. Hill, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011); State v. Stokes, 381 S.C. 390, 400-01, 673 S.E.2d 434, 439 (2009).

Witnesses may be impeached regarding their ability to perceive events and recall them accurately. See Wigmore on Evidence: Impeachment and Rehabilitation, § 8.1. "Evidence of a witness's psychiatric condition is admissible if the witness suffered from some mental aberration rendering his observation and memory . . . unreliable." Walden v. Department of Transp., 27 P.3d 297, 307 (Alaska 2001) (internal quotations omitted). In Walden, the witness suffered from bipolar disorder and took lithium. Id. at n. 32. The court ruled that evidence regarding the effect of the witness's mental disorders on his perception and memory was admissible and could be used for impeachment. Id. at 307.

"In simple language, the defendant has the right to explore every facet of relevant evidence pertaining to the credibility of those who testify against him." United States v. Partin, 593 F.2d 750, 763 (5th Cir. 1974). In Partin, the jury was entitled to know that the witness had been committed to a mental hospital and suffered from auditory hallucinations. Id. at 764. Similarly, here the jury had a right to know that Bethea was high on drugs and suffered from delusions and hallucinations when he locked himself into a statement that implicated appellant.

Bethea was the State's key witness at trial. Unlike Williams, Bethea did not give conflicting statements. Bethea could not be impeached like Williams with a version of the shooting that was internally inconsistent. Williams' version had the car facing the

wrong direction with Williams was shooting over the top of the car. Bethea's version contained no such inherent inconsistency and therefore the impeachment that Bethea suffered from delusions was important to attack a statement that otherwise seemed coherent. If Bethea was delusional when he gave his first statement, he had an incentive to stick to his original statement to curry favor with the State. Appellant should have been allowed to cross-examine Bethea to show problems with his capacity, credibility, and bias.

CONCLUSION

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

Respectfully submitted,

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David Alexander
Appellate Defender

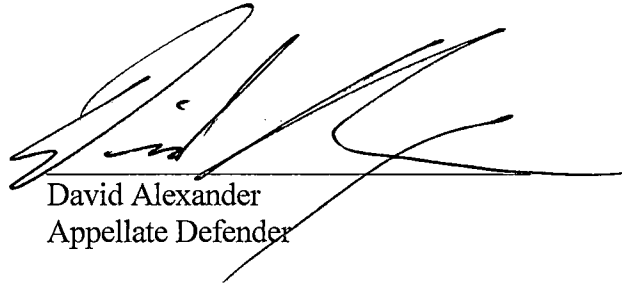
ATTORNEY FOR APPELLANT

This 1st day of December, 2015.

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."

December 1, 2015

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

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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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of December, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of December, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.