

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County
Honorable R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

Respondent,

v.

DEREKEE JOHNSON,

Appellant.

Appellate Case No. 2014-000920

SUPPLEMENTAL RECORD ON APPEAL

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VOIR DIRE

1 MR. MAXWELL: None from the State.

2 THE COURT: Defense?

3 MR. DUNN: No, sir.

4 THE COURT: Thank you very much. Ladies and gentlemen
5 that were selected as members of trial of this case,
6 momentarily I'm going to ask that you step to your new
7 temporary home in the jury room and get used to your
8 surroundings there. During this brief recess do not discuss
9 this case with anyone, that includes your fellow jurors or
10 anyone else. I must give some instructions to your
11 colleagues that were not selected to the trial of this case
12 concerning their jury service for the remainder of the week.
13 When I get you back out here I will give you further
14 instructions regarding your jury service also as a member of
15 this trial jury. So please, please do not discuss this case
16 with anyone, including your fellow jurors. You would not be
17 authorized to discuss this case with anyone until you've
18 heard all of the evidence, all of the testimony, closing
19 arguments by the attorneys, instructions on the law given by
20 the Court and then directed by the Court to begin your
21 deliberations with your fellow jurors in your jury room.
22 Mr. Collins, I'm going to appoint you foreperson of the
23 jury, please, thank you for volunteering for that very
24 important position.

25 (The jury left the courtroom.)

VOIR DIRE

1 THE COURT: Sheriff, would you please take juror number
2 161, Mr. Trapp, into custody for me, please? Juror number
3 161 is in custody Mr. Trapp. I do not want him held with
4 any other -- with any prisoners but he is in custody at this
5 time.

6 (The remaining panel was dismissed.)

7 THE COURT: The State ready?

8 MR. MAXWELL: Yes, sir.

9 THE COURT: Defense ready to proceed?

10 MR. DUNN: Yes, sir.

11 THE COURT: If you will bring us our jury panel,
12 please, sir.

13 (The jury returned to the courtroom.)

14 THE COURT: Momentarily I'm going to release you from
15 your jury service for the remainder of the day. I have
16 certain -- and this is not unusual in most if not almost
17 every case, there's certain pretrial matters I must take up
18 outside of your presence that will take the remainder of the
19 afternoon and part of the morning. Rather than hold you
20 captive any further today I'm going to give you instructions
21 concerning your jury service and give you the time to report
22 back on tomorrow. While you are members of this jury panel
23 and until your jury service is concluded you shall not
24 discuss this case with others, that includes your fellow
25 jurors, family, friends or anyone else until you are

VOIR DIRE

1 authorized to do so by the Court with your fellow jurors in
2 your jury room. You may not read, watch or listen to any
3 news reports about the case should there be any. You may
4 not use a computer, cellular phone or any other electronic
5 device with communication capabilities while in attendance
6 at trial or during deliberations. These devices may be used
7 during lunch breaks or over an evening recess but may not be
8 used to obtain or disclose information which is prohibited
9 by the Court. Information which is prohibited by the Court
10 includes but is not limited to the following: Information
11 about a party, a witness, an attorney or a court officer,
12 news accounts about the case present or past, information
13 collected through juror research on any topics raised or
14 testimony offered by any witness, or information collected
15 through juror research on any other topic that the juror
16 might think may be helpful in deciding the case. You will
17 be able to repeat this back to me probably before the case
18 is submitted to you for your deliberations and your verdict.
19 You decide the case based on the evidence and the testimony
20 from the witnesses testifying under oath before you from
21 this witness stand and any physical items of evidence that
22 may be introduced; charts, diagrams, photographs or the
23 like. I don't know what may be introduced or may not be
24 introduced but you decide the case based on what you hear
25 within the four walls of this courthouse and the law as I

VOIR DIRE

1 tell you the law is. You are the judges of the facts. You
2 determine what the true facts are, you apply the facts as
3 you find them to be, and the law as I tell you the law is
4 and you reach verdicts that speak the truth that does
5 justice in this case. That is your duty, that is your
6 responsibility. With that being said, having talked with
7 the attorneys I would ask you to please follow my
8 instructions as I know you will do throughout the trial of
9 the case and further if you would report back at 11:00 in
10 the morning, at 11:00 in the morning. I do not want you to
11 think I or these attorneys or the court staff do not start
12 until 11:00 in the morning, they were here well in advance
13 today and will be here well in advance tomorrow with a goal
14 of clearing the decks so to speak so that when you come out
15 here tomorrow and we will be ready to begin the trial of the
16 case. Any objection to anything I have told the jury from
17 the State, Solicitor?

18 MR. MAXWELL: None from the State.

19 THE COURT: From the defense?

20 MR. DUNN: No, sir.

21 THE COURT: 11:00 a.m. in the morning. I hope y'all
22 have a pleasant evening, see you promptly at 11:00 in the
23 morning.

24 (The jury left the courtroom.)

25 THE COURT: Anything further, Solicitor?

PRETRIAL MOTIONS

1 being present, is that correct, Mr. Dunn?

2 MR. DUNN: Yes, sir. I had asked that you not make a
3 ruling until this morning until we had an opportunity to
4 have Mr. James brought in to custody and he is not.

5 THE COURT: What is the defense's position at this
6 time?

7 MR. DUNN: Your Honor, I would argue that his testimony
8 would be very important to the Court. I mean, the Court has
9 heard so many different stories yesterday about what
10 happened, I believe his testimony would back up Mr.
11 Johnson's testimony, but I can't make a witness show up in
12 any way other than with a subpoena. And he -- in all candor
13 to the Court he has indicated to me that he would -- even if
14 put on the stand he would not testify. I kept hoping he
15 would change his mind and he would come through, a man's
16 life is on the line and he would come and tell what
17 happened. So even if he is here I could not with all
18 honesty as an officer of the Court tell you that he would
19 testify. But if he did testify and he remained consistent
20 with what he told both me personally and my investigator,
21 then I think it would be beneficial as to the defendant.

22 THE COURT: What are you asking me to do?

23 MR. DUNN: Before I get to that, I think it's important
24 to put on the record that my client has asked to represent
25 himself, and that I think for me to make an argument one way

PRETRIAL MOTIONS

1 or the other on that would be improper until his ability
2 to -- well, until we go through the elements and determine
3 whether or not he's going to represent himself that he may
4 very well have his own opinion as to what should be done
5 with what bit of -- what he would want done with that. So
6 that being said, he approached me yesterday afternoon
7 after-hours, after we finished with court and said he wanted
8 to represent himself. I approached him again this morning
9 just to see if he'd changed his mind, he said no. I told
10 him that the only thing that I could do is bring it to the
11 Court's attention and let the Court question him pursuant to
12 the requirements under Faretta and let the Court make a
13 decision. I think it would be more proper for that to be
14 addressed before we address the conclusion of the stand your
15 ground argument, Your Honor.

16 THE COURT: All right. If you would come around to the
17 podium, please, to the rail, please, Mr. Johnson.

18 (The defendant was sworn.)

19 THE COURT: Tell me your full name, please.

20 THE DEFENDANT: Derekee Martez Johnson.

21 THE COURT: How old are you?

22 THE DEFENDANT: Thirty-six.

23 THE COURT: And how much education do you have?

24 THE DEFENDANT: I completed the 10th, stopped school in
25 the 11th.

PRETRIAL MOTIONS

1 THE COURT: You completed the 10th and stopped school
2 in the 11th grade?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you had any education, any schooling
5 beyond that?

6 THE DEFENDANT: I have -- on many -- on a couple
7 occasions attempted to receive my GED, but on either attempt
8 I was not consistent and did not complete it.

9 THE COURT: Why didn't you complete it?

10 THE DEFENDANT: Basically I just got occupied with
11 something else at the time, something else came up to be
12 more important at the time than to finish the classes.

13 THE COURT: Before you were incarcerated what type of
14 work did you do?

15 THE DEFENDANT: I ain't had did no work as important to
16 me receiving a paycheck as in my check stub. But you can
17 say I was somewhat freelance, I used to do work for
18 different people as in landscaping.

19 THE COURT: You have never held a job for which you
20 received a pay stub?

21 THE DEFENDANT: No, sir.

22 THE COURT: Ever in your life?

23 THE DEFENDANT: No, sir.

24 THE COURT: Can you read?

25 THE DEFENDANT: Yes, sir.

PRETRIAL MOTIONS

1 THE COURT: Can you write?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And of course you can speak.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand the english language?

6 THE DEFENDANT: Yes, sir. Before you make a decision I
7 would like to make a proper motion to the Court. My motion
8 it's not to represent myself as in to fire or relieve
9 Mr. Dunn, my motion is to assist Mr. Dunn as in shadow
10 counsel. I would like to assist him in cross examining the
11 witnesses against me and in my favor.

12 THE COURT: As I understand the law, and I'm sure if I
13 misunderstand it Mr. Dunn and the Solicitor will correct me,
14 there's no such thing as a hybrid representation in South
15 Carolina, and by that I mean you have a 6th Amendment right
16 to appointed counsel if you cannot afford a lawyer and
17 that's what Mr. Dunn is. He is appointed to represent you,
18 to present your defense, to subpoena witnesses on your
19 behalf at your request. In other words you assist him in
20 saying I want to be -- I'm not telling you what to say, but
21 if you say, "I want these witnesses subpoenaed," or I want
22 you to look at this issue or that issue, then his duty and
23 responsibility is to provide you a defense. And when I say
24 hybrid he has -- as your lawyer he has the right to cross
25 examine the witnesses that testify as he did yesterday

PRETRIAL MOTIONS

1 throughout the course of yesterday with various witness
2 cross examining them, those duties and responsibilities
3 cannot be split. In other words when I say hybrid I can't
4 let Mr. Dunn do certain things that a lawyer can do and then
5 let you do other things. For example, you cannot -- if he
6 is your lawyer you can't cross examine the witnesses. The
7 easiest way I know to explain it is you can't have it both
8 ways, either you have him as your attorney, he represents
9 you, or you represent yourself. Do you want to discuss that
10 with him? Now, let me tell you this, Mr. Johnson, when I
11 say that, I noticed yesterday when Mr. Dunn would cross
12 examine a witness generally before he finished, before he
13 said no further questions he would come and check with you.

14 THE DEFENDANT: Yes.

15 THE COURT: He would come and check with you.

16 THE DEFENDANT: Yes. I'm not questioning Mr. Dunn's
17 ability, but at the same time yesterday the witnesses is not
18 being approached directly the way they need to be
19 questioned. They just -- Mr. Dunn, he had just went over
20 everything that the Solicitor was saying, he was just going
21 and asking the witnesses basically the same thing that the
22 Solicitor had as in repeating after him, and it was just --
23 I feel as though that the witness need to be approached on a
24 more definite level.

25 THE COURT: Well, for example let's take the first

PRETRIAL MOTIONS

1 witness, Captain Watkins -- I believe it was, Captain --
2 testified as to his arrival at the scene and his
3 observations, and that there were people about and they
4 began an investigation and certain items were located not by
5 the captain but by others as far as shell casings and such.
6 And, of course, on cross examination as I recollect Mr. Dunn
7 went into more on the .25 caliber weapon that was found,
8 that it was an operating weapon, that it was a loaded weapon
9 I believe he went into also. So he highlighted in my mind
10 that there was a weapon found and, of course, the inference
11 was that that was the -- would have been the weapon that
12 Mr. McCloud had, that is the inference. The captain was not
13 an eye witness as he also pointed out, I believe the captain
14 described the entrance wound as being in the back and the
15 exit wound as being in the front. Mr. Dunn also pointed out
16 that the captain had no expertise in that particular area.
17 So I don't want to go through every witness, witness by
18 witness, I'm not going to rehear the motion -- go ahead,
19 Mr. Johnson.

20 THE DEFENDANT: Yes, sir. According to the forensic
21 evidence he cross examined him to legal standard, but I'm
22 speaking as in the eye witnesses as in the ones who gave a
23 statement against me saying that they had saw me do
24 something or the ones that were on the crime scene or at the
25 crime seen, Your Honor.

PRETRIAL MOTIONS

1 THE COURT: Well, he certainly pointed out that there
2 were discrepancies between the testimony of some of the "eye
3 witnesses," and some of the locations that they claimed to
4 have seen you. For example, coming up is that First Avenue,
5 walking up between C.C.'s house and Lynetta's house where it
6 was pointed out by Mr. Dunn that you were in the back yard
7 only of the trailer at C.C.'s house and never came around
8 the front, he pointed out those discrepancies. But at the
9 same time that -- to kind of double back, I can't allow you
10 to have a lawyer and then you pick -- cherry pick particular
11 witnesses that you want to cross examine. Now, you have a
12 right to represent yourself if I find that you knowingly and
13 intelligently understand your right to counsel and that you
14 knowingly and intelligently waive your right to counsel.

15 THE DEFENDANT: I'm not waiving that right. I wanted
16 to make a motion to have Mr. Dunn shadow.

17 THE COURT: To make a motion to what?

18 THE DEFENDANT: As shadow counsel, as to me to assist
19 him and you denied my motion.

20 THE COURT: Well, I want you to assist Mr. Dunn in your
21 defense, that is to your advantage, an individual having the
22 ability and the right to assist his lawyer in the
23 presentation of his defense but I cannot allow you under our
24 law to have Mr. Dunn as your attorney and then you pick and
25 choose particular witnesses that you want to cross examine.

PRETRIAL MOTIONS

1 Now, let me tell you this, Mr. Johnson, this isn't a
2 judicial marathon. When I start a trial I don't have any
3 expectations of when I want it over with, it is not my
4 trial, the stakes are very high in this case, you know that.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The stakes are high for you and the stakes
7 are high for the family of Mr. McCloud, the stakes are high
8 for the defense. I'm here as long as it takes to try this
9 case.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, with that being said any time you
12 think you need further consultation with witnesses on the
13 stand, if you need to talk a little bit more with Mr. Dunn
14 before that witness is released from the stand, you let your
15 lawyer know, I will give you all the time in the world, all
16 the reasonable time to speak with him. Because this is your
17 day, week, two weeks, or whatever in court and I understand
18 and you understand what you are facing. And my
19 understanding from you right now is you want Mr. Dunn to
20 represent you?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Do you have any other questions
23 you would like to ask me?

24 THE DEFENDANT: No, sir. You summed it up basically,
25 yes.

QUINTON ADAMS

1 (A bench conference was held.)

2 THE COURT: Ladies and gentlemen, we're going to take
3 our lunch break momentarily, and let me take this matter up
4 real quick and see if we can finish this witness before
5 lunch. So if you would step to the jury room momentarily,
6 please, I have to take up a matter outside of your presence.
7 If I see it's going to be lengthy I'll bring you all back
8 in.

9 (The jury left the courtroom.)

10 THE COURT: Just step out there with the sheriff for a
11 minute, Mr. Adams, while I take this matter up. All right.
12 Mr. Dunn?

13 MR. DUNN: If it may please the Court, Your Honor? You
14 had -- before our trial technically started but when you had
15 addressed the defendant, or excuse me, Derekee, that you had
16 told him at any point during the examination of witnesses if
17 he had an issue where he had to bring some issues up with me
18 about the cross examination of those witnesses that you
19 would be willing to take a break for him to. He's now
20 indicated to me he has one of those, and that's what the
21 issue is, he wants to talk to me about Quinton Adams before
22 we release him and I wanted to bring it to your attention
23 that we may be done, we may not be done with his
24 examination.

25 THE COURT: So he wants to talk with you a minute right

QUINTON ADAMS

1 now?

2 THE DEFENDANT: I would like to do outside of the
3 court.

4 MR. DUNN: We just need to go back and find some
5 privacy.

6 THE COURT: Certainly. We'll take about five minutes
7 then.

8 (The jury returned to the courtroom.)

9 THE COURT: All right. The Court will come back to
10 order. Mr. Foreman, ladies and gentlemen, we may have a --
11 the attorney may have a few more questions for this witness,
12 I would like to complete this witness before we take our
13 lunch and recess.

14 MR. DUNN: Your Honor, this should be brief.

15 THE COURT: All right.

16 BY MR. DUNN:

17 Q. I just want to make sure I'm understanding your
18 testimony today, Mr. Adams. Your testimony a little while
19 ago was that Clyde and Derekee did not have any words that
20 day, correct?

21 A. Yes, sir.

22 Q. Back at the time that this incident happened back in
23 May of 2012 you spoke with the police, correct?

24 A. May of 2000 -- are you talking about the May 18th of
25 2012?

TIFFANY HEZEL

1 trial and the handling of them, I know y'all are both
2 familiar with them. They cannot be pointed at any person,
3 they always have to be handled by the barrel, the ammunition
4 and the firearm itself has to be separated each and all of
5 the time. Anything further before we take our recess?

6 MR. DUNN: Yes, sir.

7 MR. MAXWELL: None from the State.

8 THE COURT: Yes?

9 THE DEFENDANT: Your Honor, I was not present this
10 morning when you came into the courtroom and asked was there
11 anything before we bring the jury in. Me and my attorney
12 had spoke about the coroner, Mr. Ramsey's testimony. To my
13 understanding we had requested for the coroner to be on
14 subpoena and now he's telling me that he may not be here.
15 There is some important evidence in his testimony that need
16 to be stated, and I had asked him could he ask the other
17 coroner, the one who had transported Mr. McCloud's body, but
18 he tell me that it was inappropriate or we couldn't ask
19 her -- someone else the question. So my motion or request
20 to the Court is to have Mr. Ramsey subpoenaed so he can
21 state his testimony.

22 THE COURT: Thank you, thank you, Mr. Johnson. Mr.
23 Dunn?

24 MR. DUNN: Would you like me to address those issues,
25 Your Honor?

TIFFANY HEZEL

1 THE COURT: If you would like to add or --

2 MR. DUNN: I will clarify for purposes of the record.

3 THE COURT: All right, yes, sir.

4 MR. DUNN: The information that he is speaking about is
5 some hearsay evidence contained in a SLED note that the
6 coroner told the SLED agent certain facts about the location
7 of gunshot wounds, whether they were exit wounds or entrance
8 wounds, clearly hearsay evidence because it's in the police
9 report and the deputy yesterday could not testify to that in
10 any way, shape or form, she was neither the one who made the
11 statement nor the one who wrote the statement down. As far
12 as addressing the coroner, I didn't think it was appropriate
13 to this morning because if we have to call the coroner that
14 would be on us to do that and my case comes tomorrow so I
15 wasn't ignoring the issue, I just didn't think it was
16 appropriate this morning when the Court asked if there was
17 any issues because it's not an issue. The State still has
18 their case-in-chief right now.

19 THE COURT: Sure. Well, do you want the coroner under
20 subpoena for tomorrow?

21 MR. DUNN: I was going to at some point today talk to
22 the coroner, my understanding is his office is right around
23 the corner and see if I can use him. This is one of those
24 issues that you run into when you have a conflict between
25 the attorney and a client that it's my case to try how I see

TIFFANY HEZEL

1 fit and if I want to call him as a witness I can and if I
2 don't want to call him as a witness, that's my right, that's
3 not the defendant's right. That being said, I was going to
4 speak with him at some point today and see if I needed his
5 testimony, and if I determine that I don't need it then I
6 was not going to use him.

7 THE COURT: And you can talk with your client about
8 that. But if you want the Court to issue a subpoena to the
9 coroner to secure his presence if needed I will be delighted
10 to direct the clerk to issue a subpoena, and I know the
11 officers would serve the coroner although I'm sure the
12 coroner has no objections to coming.

13 MR. DUNN: And I will call him around lunchtime, I just
14 haven't had a chance this morning to do it.

15 THE COURT: Thank you very much. Anything further Mr.
16 McCloud?

17 THE WITNESS: Mr. Johnson.

18 THE COURT: I apologize, Mr. Johnson. Anything
19 further?

20 THE WITNESS: No, sir, Your Honor.

21 (A recess was taken and the jury then returned
22 to the courtroom.)

23 THE COURT: Welcome back, ladies and gentlemen. We are
24 continuing the case by cross examination of the case by the
25 attorney for Mr. Johnson.

JOHN SEIBLES

1 THE COURT: Mr. Foreman, ladies and gentlemen, if you
2 would step to your jury room momentarily, do not discuss the
3 case.

4 (The jury left the courtroom.)

5 THE COURT: All right. Yes, sir?

6 THE DEFENDANT: Yes, sir. I just want to let it known
7 for the record that my attorney seems to be working with the
8 prosecutor. I have gave him multiple questions to ask Dr.
9 Ross and he did not ask the questions according to the way I
10 had needed him to ask due to the possibility of gunshot
11 wound and he totally ignored my request. I just wanted that
12 on the record due to if there's a cause for appeal, Your
13 Honor.

14 THE COURT: What are you asking me to do, Mr. Johnson?

15 THE DEFENDANT: I'm asking you to -- I'm asking you to
16 just have what I just stated to jot down on the record that
17 I would have that ground for appeal, Your Honor.

18 THE COURT: Well, what you just said is on the record.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Because we have a court reporter here.

21 THE DEFENDANT: Well then, my motion have already been
22 granted. Thank you, sir.

23 THE COURT: Mr. Dunn?

24 MR. DUNN: I'm not sure if I would agree I didn't ask
25 his questions. I don't necessarily agree with the line of

JOHN SEIBLES

1 questioning that he wanted me to ask and I quite frankly
2 think the last question I asked didn't do him the good that
3 he wanted asked and I was quite content leaving it where it
4 was, I thought I got out of her what I needed to get out of
5 her. If he wants to tell the Court what the questions are
6 that's up to him. I don't feel compelled to go back and ask
7 anymore questions, Your Honor.

8 THE COURT: All right. Anything further, Mr. Johnson?

9 THE DEFENDANT: Would you need me to state for the
10 record what my question was I would --

11 THE COURT: You need to ask your lawyer that, I'm
12 not -- I can't give you legal advice. Ask your lawyer if
13 you ought to state it for the record.

14 THE DEFENDANT: No, I asked if you need me to. I'm not
15 asking you for your advice, I'm asking you if you need me
16 to.

17 THE COURT: I'm not going to answer that question. Ask
18 your lawyer that question, talk to your lawyer.

19 THE DEFENDANT: I will go ahead and put it on the
20 record. The pathologist, she had stated according to her --
21 ricocheted and also one bullet may have spined the victim
22 and maybe another bullet had struck him in the back at that
23 time according to her stating that he was struck from the
24 back. And I asked my attorney to specify the pathologist
25 stating that due to her stating that there are possibilities

JOHN SEIBLES

1 that it could have been ricocheted and possibility that it
2 could have been the body spined, that there was no definite
3 saying he was struck from the back as in that he was facing
4 the shooter and that question was not stated.

5 THE COURT: I'm not tracking how he could be shot in
6 the back and facing the shooter at the same time.

7 THE DEFENDANT: Like I had stated, Your Honor, if one
8 bullet had struck the victim and that impact of the bullet
9 had spined the victim, another bullet could have struck the
10 victim in the back then, but the victim original position
11 was facing the shooter.

12 THE COURT: All right. Well, you have it in the
13 record.

14 THE DEFENDANT: All right. Thank you, sir.

15 THE COURT: Are we ready for the jury, Mr. Dunn?

16 MR. DUNN: I am.

17 THE COURT: Solicitor?

18 MR. MAXWELL: Yes, sir, Your Honor.

19 (The jury returned to the courtroom.)

20 THE COURT: Thank you. Our jury is back. Solicitor,
21 you may proceed.

22 DIRECT EXAMINATION

23 BY MR. MAXWELL:

24 Q. Major Seibles, state your name for the record.

25 A. John Seibles.

1 THE COURT: All right.

2 MR. DUNN: But she was, I mean --

3 THE COURT: Sheretta Pickney.

4 MR. DUNN: Yes, sir. We believe that's whose she is.

5 THE COURT: All right. And next, Mr. Dunn?

6 MR. DUNN: Well, Your Honor, if that's the case with
7 that particular juror and she knows the family then I think
8 we have issues that she may need be questioned and removed
9 as a juror.

10 THE COURT: What's the next issue?

11 MR. DUNN: Then the laugh issue?

12 THE COURT: Yes, sir.

13 THE DEFENDANT: And last one has to do with whether or
14 not the prosecutor has engaged in misconduct since he has
15 told the Court that he was not present during the
16 questioning of Mr. Johnson. And it may very well -- it's
17 not an issue that I sought but he has brought to my
18 attention, he may need to address the Court on that, Your
19 Honor, not the prosecutor, but Mr. Johnson.

20 THE COURT: All right. So as far as number one, jurors
21 observing Mr. Johnson with leg shackles; is that correct?

22 MR. DUNN: Yes, sir.

23 THE COURT: There's nothing you want me to do about
24 that, correct?

25 MR. DUNN: There's nothing I want you to do about it,

1 Your Honor, my client is disagreeing with me.

2 THE COURT: What does he want me to do?

3 THE DEFENDANT: Your Honor, this issue is a very
4 important issue dealing with my right to a fair trial --

5 THE COURT: Tell me what you want me to do.

6 THE DEFENDANT: I'm asking for a mistrial, Your Honor.

7 THE COURT: Denied. I will give you any curative
8 instruction you want me to give the jury concerning you
9 being shackled, I am not going to grant a mistrial based on
10 the fact that a juror may or may not have seen you shackled.
11 Now, do you want me to tell the jury anything about you
12 being shackled?

13 THE DEFENDANT: I don't know what it is you can tell
14 them.

15 THE COURT: I asked you a question. Do you want me to
16 tell the jurors anything about you being shackled?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: All right. The motion for a mistrial based
19 on being shackled is denied, and further there's no curative
20 instruction requested, there will be no curative instruction
21 given. All right. Now, overheard a couple of individuals
22 on the victim's side of the courtroom after Court discussing
23 one of the jurors that may know the victim's sister,
24 Sheretta Pickney. What juror is that, Mr. Dunn?

25 MR. DUNN: If you will bear with me one second, Your

1 Honor, I will --

2 THE DEFENDANT: Your Honor, while he looks for that,
3 may I continue that particular juror? It is something that
4 he had left out.

5 THE COURT: Yes, sir.

6 THE DEFENDANT: That particular juror is not only
7 friends with Ms. Pickney but also friends with the victim
8 himself and worked -- I don't know if she continues to work,
9 I believe that the place is closed down now, but it was a
10 fast food restaurant/club called J Stop and the victim was
11 there all of the time and they were also friends or
12 associates.

13 THE COURT: What is that juror's name or number?

14 MR. DUNN: Her number, Your Honor, is 142, her name is
15 Tiffany Robinson, at least I believe that's who it is based
16 on his description to me, Your Honor.

17 THE COURT: And then number three, the prosecutor has
18 engaged in misconduct by stating -- there has been no
19 testimony by the prosecutor because he is not a witness --
20 stating that he was not present during the questioning of
21 Mr. Johnson.

22 MR. DUNN: Yes, sir.

23 THE COURT: All right. What are you asking me to do
24 about that?

25 MR. DUNN: For a mistrial, Your Honor.

1 THE COURT: All right. The mistrial would be denied.
2 I don't think that's something that would create a manifest
3 necessity or that would affect a fair and impartial trial.
4 Further there's no testimony -- the testimony -- any
5 testimony from this affect at this point on Major Seibles.
6 In fact, it was on the video as to who was present during
7 that questioning and that the solicitor was not present
8 during any questioning so he could not have engaged in any
9 misconduct because the prosecutor has not testified and is
10 not a witness in the case. Bring me juror number 142,
11 please.

12 THE DEFENDANT: Your Honor, if it please the Court?
13 The Solicitor is not a witness and did not testify but he is
14 an officer of the court and therefore everything he say
15 should be the truth, and he lied saying that he was not part
16 of the testimony when he wasn't a part of the whole
17 testimony but the camera just did not show him in as well
18 that it did not show my own attorney, William Frick. He had
19 stated while questioning Mr. Seibles that he was not present
20 and then later on he had stated that he was present during
21 partial. So -- and according to my own attorney according
22 to yourself had allowed that to go uncorrected as to when
23 that appeared. I feel as though I'm being denied a fair
24 trial due to that issue today, Your Honor.

25 THE COURT: All right. Thank you, thank you very much.

1 I would restate my ruling, it does not go to the issue -- it
2 does not create an issue of manifest necessity to grant a
3 mistrial and would not affect the fair and impartial trial.
4 Bring me juror number 142, please, Ms. Robinson.

5 (The juror entered the courtroom.)

6 THE COURT: Good morning, Ms. Robinson; is that right?

7 THE JUROR: Yes, sir, uh-huh.

8 THE COURT: And you are juror number 142. I want to
9 ask you just a few questions if you do not mind. Did you
10 know the victim, Bobby McCloud, Clyde?

11 THE JUROR: No.

12 THE COURT: Do you know Sheretta Pickney?

13 THE JUROR: No.

14 THE COURT: No?

15 THE JUROR: Nuh-uh.

16 THE COURT: Do you know anyone named Sheretta Pickney?

17 THE JUROR: No.

18 MR. MAXWELL: Your Honor, I apologize. Just for the
19 record the name is different, I believe it's Shaquita, not
20 Sheretta Pickney is Mr. McCloud's sister.

21 THE COURT: Do you know Sheretta Pickney or Shaquita
22 Pickney?

23 THE JUROR: No.

24 THE COURT: No? Did you work at a fast food or a store
25 known as Dave's Place?

1 THE JUROR: No.

2 THE COURT: Was that the name of the store?

3 THE DEFENDANT: Name of the store is Dave's Stop?

4 THE COURT: Dave's Stop?

5 THE DEFENDANT: The boss man --

6 THE COURT: I asked the question, I don't want any
7 further explanation. Dave's Stop?

8 THE JUROR: I have a sister that did.

9 THE COURT: You have a sister that did?

10 THE JUROR: Uh-huh.

11 THE COURT: Okay. All right. And you don't work at
12 that location and never did?

13 THE JUROR: No.

14 THE COURT: You don't know Sheretta or Shaquita
15 Pickney?

16 THE JUROR: No.

17 THE COURT: And you did not know the victim, Bobby
18 McCloud, also known as Clyde?

19 THE JUROR: No.

20 THE COURT: Will you just step right out the door for
21 me with the bailiff just momentarily please?

22 (The juror left the courtroom.)

23 THE COURT: All right. Anything else you would like me
24 to ask Ms. Robinson, Mr. Dunn?

25 MR. DUNN: Not to ask her, Your Honor, no.

1 THE COURT: It appears she has testified or stated she
2 does not know the victim, does not know either Sheretta or
3 Shaquita Pickney, that she has never worked at Dave's Stop
4 and that her sister worked at Dave's Stop. Anything else
5 you want me to ask?

6 MR. DUNN: To ask, no, sir.

7 THE COURT: All right. Solicitor?

8 MR. MAXWELL: Nothing else, Your Honor.

9 THE COURT: Do you have any further matters or issues,
10 Mr. Dunn, you want to bring up as to this juror?

11 MR. DUNN: Your Honor, my concern at this point would
12 be the fact that she could now feel singled out having been
13 brought in by the other folks and questioned including the
14 fact that my client was interrupting you and you had to
15 assert some control and some authority over him, that it
16 could cause her prejudice.

17 THE COURT: Well, whatever wound has been inflicted to
18 Mr. Johnson by interrupting me is self-inflicted, it's not
19 inflicted by the Court, number one. Number two, I would
20 advise the juror that I wanted to ask these questions to
21 ensure that she could still be a fair and impartial juror.
22 She has no knowledge of the victim, has no knowledge of the
23 individuals who y'all gave me different names in that
24 regard. And no, I don't want to be interrupted. I don't
25 interrupt y'all, y'all don't interrupt me, it's just that

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County
Honorable P. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000920

THE STATE,

Respondent,

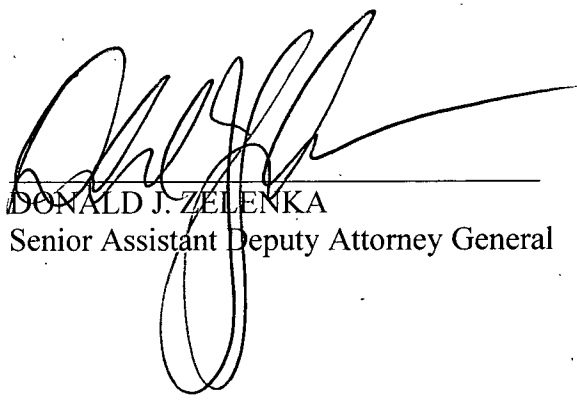
v.

DEREKEE JOHNSON,

Appellant

CERTIFICATE OF SERVICE

I certify that I have served the Supplemental Record on Appeal in the foregoing action by depositing copies in the United States mail to R. Morrison Payne, Esquire, P.O. Box 315, Walterboro, SC 29488 and by InterAgency Mail to Robert M. Dudek, Chief Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 on the 1st day of October, 2015.


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Senior Assistant Deputy Attorney General