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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

JUN 23 2016

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Roger M. Young, Circuit Court Judge

Case Nos. 2014-GS-10-00763
2014-GS-10-00765 and 2014-GS-10-00767

Appellate Case No. 2015-000709

The State, Respondent,

v.

Denzel Heyward Appellant

INITIAL REPLY BRIEF OF THE APPELLANT

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The Appellant, Denzel Marquise Heyward, responds to the Brief of Respondent as follows:

- A. The errors were not harmless because they materially affected the perception of the testimony of JuJuain Hemingway and Quasantrina Rivers, whose testimony was the only significant evidence against Mr. Heyward.

In his initial brief, the Mr. Hemingway identified two critical and prejudicial errors. The first was the improper admission of JuJuain Hemingway's identification of Mr. Heyward following highly suggestive, repetitive line-ups used by law enforcement.¹ The second was the admission of testimony regarding the physical abuse of Quasantrina Rivers by Mr. Heyward.² The State repeatedly used the specious identification in multiple contexts to undergird the shaky and contradictory testimony of Hemingway. [See Initial Brief of Appellant, p. 10-11]. The State also repeatedly referenced physical abuse, which depicted the Appellant as the type of person who uses physical violence to coerce others to bend to his will. These errors were not harmless in view of the pivotal nature of the testimony.

The harmless error doctrine should be used guardedly and on a case-by-case basis. State v. Morris, 289 S.C. 294, 297, 345 S.E.2d 477, 479. No definite rule of law governs finding an error harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Gillian, 360 S.C. 433, 454-55, 602 S.E.2d 62, 73 (Ct.App.2004) (citing State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990)). Whether an error is harmless depends on the particular facts of each case. Two factors bearing on the harm of an error are (1) the importance

¹ See Initial Brief of Appellant at p.4-11.

² See Initial Brief of Appellant at p. 12-20.

of the witness's testimony in the prosecution's case and (2) the overall strength of the prosecution's case. State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 1438 (1986)).

Here, the prosecution and the jury relied almost exclusively on the testimony of JuJuain Hemingway and Quasantrina Rivers. Where the credibility of a witness is of paramount importance to a claim or a defense, an error bearing on that witness's credibility is not harmless. See State v. Morris, 289 S.C. at 298, 345 S.E.2d at 479 ("Error which substantially damages the defendant's credibility cannot be held harmless where such credibility is essential to his defense"). The credibility of these two witnesses was the single most important factor in the outcome of this closely-decided case. The jury deliberated for over eight hours, and during that time, reviewed the testimony of these two witnesses. [Court's Exhibits No. 1 and No. 5]. After a deadlock on four counts and an Allen charge, the jury returned a mixed verdict, failing to come to a conclusion on two charges. The deliberation was so lengthy, it was unprecedented in the trial court's experience. [Tr. Vol. 3, p. 470]. Given the closeness of this case, the Court cannot say that the admission of the identification and physical abuse did not have a bearing on the outcome.

B. No Other Overwhelming Evidence of Guilt.

Additionally, the state did not present any other overwhelming evidence of guilt, such that the verdict is free from doubt despite the errors bearing on this testimony. See, State v. Singleton, 303 S.C. 313, 400 S.E.2d 487 (1991) (finding that in the absence of overwhelming guilt, the error was not harmless). Overwhelming evidence is

evidence which tends to show guilt to such an extent that no other reasonable conclusion can be reached. State v. Bailey, 298 S.C. 5, 1, 377 S.E.2d 581, 584 (1989).

In support of its contention that the record contained overwhelming evidence of guilt, the state relies on "identifications" provided by Kadeem Chambers and Verna Lockhart-Carter. (Brief of Respondent, pp. 17-18).³ The evidence was inconsistent, incompetent and incompatible with the state's theory of the case. Neither of these "identifications" were conclusive evidence that Denzel Heyward engaged in an armed robbery or attempted murder on Cynthia Drive that night.

- i. Kadeem Chambers' Identification of "Fat," was internally inconsistent and irreconcilable with the State's theory of the case.

Kadeem Chambers' identification of Mr. Heyward referred to by the State [Tr. Vol. 2, p. 110; Brief of Respondent, p. 17] was not internally consistent or consistent with the State's case. A first responder testified that Kadeem Chambers indicated "Fat or Fet" shot him. However, the investigators that interviewed Kadeem Chambers actually reported to his brother that Kadeem identified "Fat Chuck" as his shooter. [Tr. Vol. 3, p. 190]. Not only are the statements vague and inconsistent, but both statements are, in fact, totally irreconcilable with the remainder of the State's evidence and theory of the case, which identified Deshaun Simmons as the actual shooter.

- ii. Verna Lockhard-Carter's Testimony did not Provide Overwhelming Evidence of Guilt.

Verna Lockhard-Carter is the mother of Lorenzo Mehciz and resides in the home on Cynthia Avenue near the incident location. Lorenzo Mehciz was called as a witness,

³ Respondent also cites cell tower data indicating Mr. Heyward's phone was in the John's Island area that night. Of course, Mr. Heyward's family lived right around the corner [Tr. Vol. 2, p. 177], so this could hardly be considered overwhelming evidence of his guilt.

but invoked his Fifth Amendment right against self-incrimination. [Tr. Vol. 3, p. 125]. Ms. Lockhart-Carter testified that when she returned from work around 9:00 p.m., a few hours before the incident, she saw her son and another person in front of her house. [Tr. Vol. 2, p. 147-148]. Her son, Lorenzo, told her that "Fat" was one of the people outside her home. [Tr. Vol. 2, p. 149]. Defense counsel objected to the hearsay identification, and after an on the record argument, the objection was sustained. [Tr. Vol. 2, p. 149-163, 165]. Later in the examination, and still based on her son's statement, Ms. Lockhart-Carter said "Hi, Fat," before walking into the house. The court ordered the jury to disregard Ms. Lockhart-Carter's identification of "Fat." [Tr. Vol. 2, p. 165-166]. Also, based on her son's earlier statement, Ms. Lockhart-Carter stated that she believed "Fat" was implicated in the activities outside her home. [Tr. Vol. 2, p. 175].⁴ She again qualified this information as being premised on her son's remarks.

The State's treatment of Ms. Lockhart-Carter on the stand shows that her testimony was not compelling evidence of guilt. Although Ms. Lockhart-Carter's testimony was consistent with her prior statements to the police, the State moved to have Ms. Lockhart-Carter declared a hostile witness in an off the record bench conference. [Tr. Vol. p. 170]. The motion was granted over defense counsel's objection, and Ms. Lockhart-Carter's prior statements were essentially read into the record, without an opportunity to respond to questions. [Tr. Vol. 2, p. 175]. Despite this tactic, Ms. Lockhart-Carter consistently stated that she only thought "Fat" was there because her son had told her so. Additionally, she had no knowledge of what actually

⁴ Ms. Lockhart-Carter's testimony also included a helpful alibi for her son, who was inside the house during the incident. [Tr. Vol. 2, p 169]

occurred out on the street as she was in her home during the events. [Tr. Vol. 2, p. 176-177].

The record reflects that the jury was confused by the testimony of Ms. Lockhart-Carter and her treatment as a hostile witness. During its marathon deliberation, the jury requested clarification of the term "hostile witness" in a note to the trial court. [Court's Exhibit No. 2].

In short, Kadeem Chambers inconsistently identified a person named "Fat Chuck" or "Fet" as the person who shot him, which is in direct conflict with the testimony of the State's chief witnesses, who identified Deshaun Simmons as the shooter. Ms. Lockhart-Carter's testimony was circumstantial hearsay from her son—a potential participant in the crime who refused to testify based on his own fears of self-incrimination. The testimony hardly confirmed any events that occurred on the street, and at most placed Mr. Heyward at the scene two hours before those events transpired. Neither piece of evidence conclusively establishes the state's theory of what happened on Cynthia Drive at 11:30 p.m., nor is it sufficient to excuse the errors.

CONCLUSION

Because the erroneous admission of identification evidence and physical abuse allegations related to the most important testimony at trial, they cannot be brushed aside as harmless. Additionally, outside the testimony affected, there was little compelling evidence of what actually occurred at Cynthia Drive. Accordingly, the Appellant requests that this court reverse the decisions of the trial court and remand for a new trial.

Respectfully Submitted,

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