

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Jr., Circuit Court Judge

RECEIVED

Appellate Case No. 2016-001004

JAN 22 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA,

Appellant,

vs.

EDWARD DEAN,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred as a matter of law by granting Respondent a new trial when no right of Respondent was violated and the trial court found no discovery violation occurred.

STATEMENT OF THE CASE

A jury convicted Respondent Dean on March 5, 2014, of First-Degree Burglary, Grand Larceny, and Malicious Injury to Property before the Honorable Frank R. Addy, Jr. Respondent Dean filed a motion for new trial. Judge Addy held a hearing on Dean's motion on April 13, 2016. By order dated May 4, 2016, Judge Addy granted Dean a new trial. (Order granting new trial). The State appealed the grant of a new trial on May 10, 2016.

On May 16, 2016, Dean filed a motion to dismiss, claiming the order was not appealable. The State then filed its return to Dean's motion to dismiss on November 22, 2016. No reply to the State's return was filed. This Court denied his motion to dismiss and ordered the parties to proceed with briefing on January 23, 2017. The State's initial brief follows.

STATEMENT OF FACTS

Introduction

Respondent Dean was convicted by a jury on March 15, 2014, for the burglary involving the theft of firearms. Judge Addy held a hearing based on Dean's motion for new trial on April 13, 2016. In the motion, Dean alleged the State made an undisclosed plea bargain to testifying co-defendant Gaston. Judge Addy declined to find the State made an undisclosed plea offer, but granted a new trial anyway because he promised Dean he would retain jurisdiction over the disposition of Gaston's charges, yet Gaston pled guilty and was sentenced by another judge.

Pretrial: December 11, 2013 hearing

On December 11, 2013, a pre-trial hearing was held on several matters. During the hearing, Dean's counsel inquired if the prosecution made any deals or offers to co-defendant Gaston. Eighth Circuit Assistant Solicitor Shannon Odom advised that the State made no offers to Gaston. Transcript of December 11 hearing (H. Tr.) pp. 17-19.

Dean's counsel claimed to "have a hard time believing" Gaston's attorney, Stephen Geoly, "would allow him to testify without an assurance of some benefit." H. Tr. pp. 19-20. Dean's counsel alleged that after Dean's trial, if Dean were convicted, "it's going to be the Solicitor's office with arms around Mr. Geoly and Mr. Gaston asking . . . for him to get probation or some other kind of leniency." H. Tr. p. 20, lines 10-17. Then Dean's counsel threatened, "if that were to happen, I mean, we're going to get a transcript and we're going to be back in here and we're going to be saying that we were misled and that the Court was misled." H. Tr. p. 20, lines 17-21.

Although Dean's accusations were unsupported by any evidence, Judge Addy patiently

suggested a “possible resolution” of holding the motion for new trial and sentencing in abeyance pending sentencing for Gaston. “And in that way, if what you’re describing comes to pass, your client could receive a new trial if the representations today should differ from what actually transpires subsequently. That might be a potential way to address the situation. Just thinking out loud.” H. Tr. p. 20, line 25 – p. 21, line 11.

Odom made clear, “I haven’t made an offer. I have not made any agreements with Mr. Geoly or Mr. Gaston.” H. Tr. p. 22, lines 16-18. She reiterated, “I mean, at this point, Mr. Geoly – I don’t know what he’s telling his client. But I have no[t] made any offer to them.” H. Tr. p. 22, lines 20-22. Odom added, “Mr. Gaston, he maybe testifying in hopes that something will happen after it’s all said and done, but I have not offered him anything.” H. Tr. p. 23, lines 4-11. Nevertheless, Dean’s counsel claimed, without proof, that “something happened,” “through body language” or “the wink and the nod” or “something they’ve directly said.” H. Tr. p. 23, lines 12-20. Judge Addy proceeded with the case despite the serious accusations of deceit against the State.

Dean’s jury trial: March 14-15, 2014

Dean was convicted of first-degree burglary for his participation in the burglary of a gun collector’s home. Several guns were stolen, along with other valuables. Law enforcement was unable to recover anyone’s latent prints, and the physical evidence recovered at the burglarized home could not be linked to anyone.

Law enforcement received a tip that stolen guns were stored underneath the duplex where Dean and his mother lived. The search under the duplex yielded two rifles including a .308 rifle. Trial Transcript dated March 14-15, 2014 (Trial Tr.) pp. 135-37; p. 151, lines 5-7. The serial

numbers for the guns came back stolen from Greenwood County. Trial Tr. p. 151. After receiving consent from Dean's mother, law enforcement recovered .308 ammunition and .44 ammunition from Dean's residence. Trial Tr. pp. 150-51.

Subsequently, Adrian Gaston was arrested for a separate burglary. Gaston provided a statement to law enforcement admitting to several burglaries. Although Gaston was not a suspect in the burglary of the gun collector's home, he implicated himself, Edward Dean, and co-defendant Antwan Anderson. Trial Tr. pp. 108-09.

Gaston testified for the State against Dean. He testified Anderson picked Gaston up, and Dean was with them when they burglarized the residence. Gaston acted as a look-out as they stole guns and other items. He assisted breaking into a shed to steal more firearms. Gaston kept one of the weapons, while Dean and Anderson split up the remaining firearms. Trial Tr. pp. 80-86.

On cross-examination, Gaston acknowledged he faced two life sentences and an additional 93 years and 300 days for all his pending charges. Gaston agreed he had a lawyer and was trying to cooperate. He testified he hoped his lawyer would help him get his freedom. Trial Tr. p. 101.

Dean was convicted by the jury of First Degree Burglary, Grand Larceny, and Malicious Injury to Property. Sentencing was deferred at that time and Judge Addy asked to retain jurisdiction over Gaston's charges. Trial Tr. p. 223.

Co-defendant Gaston's guilty plea

Gaston pled guilty to all his Eighth Circuit charges and a Saluda County (Eleventh Circuit) charge on May 14, 2015, in Saluda County before the Honorable Thomas A. Russo, Sr. Assistant Solicitor H. Franklin Young represented the Eleventh Circuit on the second-degree burglary charge

from Saluda County. Assistant Solicitor Lance Sheek, previously uninvolved in the case, appeared on behalf of the Eighth Circuit. Sheek advised Judge Russo that the Eighth Circuit agreed to reduce two first-degree burglary charges to second-degree burglary. Gaston pled guilty to eight second-degree burglary charges from the Eighth Circuit while thirteen attendant charges such as larceny and conspiracy charges were dismissed. Gaston's plea transcript dated May 14, 2015 (G. Tr.) p. 13, lines 13-20; p. 15, lines 8-11. So the agreement reduced Gaston's exposure from two life sentences and three hundred years' imprisonment to eighty years' imprisonment (plus ten more years of exposure for the Saluda County charge). After Judge Russo went over the plea agreement with Gaston, Judge Russo inquired if anyone promised him anything else. Gaston indicated, "No, sir." G. Tr. p. 13, line 22 – p. 14, line 1.

During the rendition of the facts supporting the Saluda County charge, Young noted once Gaston, Antwan Anderson, and two juveniles were apprehended in the vicinity of the Saluda County burglary, Gaston cooperated: "And from that . . . point Mr. Gaston started telling what happened and revealed, I believe, the facts associated with the other cases that are essentially at bar here on Greenwood County and he has, I believe, since that time cooperated extensively." G. Tr. p. 19, lines 15-19.

Geoly's sentencing presentation on behalf of Co-defendant Gaston

Geoly made a compelling presentation to Judge Russo during sentencing. Geoly identified Anderson as the "ringleader" and the older "mastermind," with Gaston "along for the ride." Geoly confided Gaston was "not the sharpest Crayon in the box" and his I.Q. was sufficiently low to receive government assistance. G. Tr. p. 25, lines 4-17.

Geoly noted Gaston did not have a criminal history prior to the string of burglaries. G. Tr. p.

26, lines 6-8. Geoly advised Judge Russo:

[H]e immediately began cooperating with law enforcement. He is kind of the follower, the go-along. I mean, once law enforcement was up with him he was an open book to them. He then told me upon my retention by his grandmother to represent him that he wanted to cooperate with law enforcement. And he did, Judge.

G. Tr. p. 26, lines 8-16. Geoly credited Gaston as “instrumental” in recovering “a lot of” stolen items. G. Tr. p. 26, lines 24-25.

Geoly pointed out to Judge Russo:

I think it is very definitely worth noting that his life was threatened. I think the solicitor can back that up. During the trial, I think one of the assistant solicitors actually heard a threat. There were threats made to him in the parking lot while he was coming to and from the courthouse.

G. Tr. p. 27, lines 1-7. Geoly explained, “But my client stood fast and was doing the right thing.” G. Tr. p. 27, lines 17-19.

Geoly advised Judge Russo, “He went into this, Your Honor, with no deal. **He had no deal.**”

G. Tr. p. 27, lines 20-21. Geoly and Gaston informed Judge Russo that Gaston worked at Carolina Pride for the last six months. He was threatened by a co-worker, a friend of Dean’s. G. Tr. p. 28, lines 12-23.

Geoly pleaded to Judge Russo, “And we would hope you would take all of that into account, Judge, and realize that this is somebody that you are very unlikely to see before you again, Judge.”

G. Tr. p. 29, lines 16-19. Geoly made the pragmatic point that “[s]omebody of his level of education and the fact that he then has a criminal record, it’s going to be almost impossible for him to get back

into the workforce. Right now he's got a job. He can provide for his two children. He can help his grandmother and that's what he's been doing, Your Honor, for the last couple of years. I think these charges are from 2012." G. Tr. p. 30, lines 2-8. Geoly implored, "This little stint, you know, three years ago when he was 20 years old was out of character for him." G. Tr. p. 31, lines 4-6.

Unfortunately, Sheek provided some misinformation, as discussed further, when he told Judge Russo, "Likewise, Judge, the understanding with Mr. Geoly was we would certainly convey to the Court if he cooperated in the trials but other than that there were no deals made beforehand." G. Tr. p. 32, lines 13-16. However, during the motion for new trial, discussed further below, Solicitor Stumbo noted Assistant Solicitor Odom was adamant she made no deal with Geoly or Gaston.

Before pronouncing his sentence, Judge Russo advised Gaston:

I'm going to give you a chance. There's a couple reasons. First off, it doesn't appear to me based on what I've heard and know of these matters that you were the lead guy on this. It sounds to me like you got caught up with a couple of fellows that had bad intentions and for whatever reason you decided to go with it.

G. Tr. p. 35, lines 1-8. Judge Russo noted Gaston's kids need him working a job and they do not need him in prison. He advised Gaston if he screwed up, he was going to the penitentiary. He told Gaston to not "screw it up." G. Tr. pp. 36-37 (direct quote, p. 37, lines 12-13). Judge Russo sentenced Gaston to seven years' imprisonment suspended to service of 128 days (time served) and five years of probation with the ability for probation to terminate after two years if restitution was paid. G. Tr. pp. 38-40.

Hearing on motion for new trial: April 13, 2016.

Dean filed a motion for new trial, alleging the State failed to disclose a favorable plea bargain

with Gaston prior to trial. A hearing on this motion was held on April 13, 2016.

At the hearing on Dean's motion for a new trial, Solicitor Stumbo explained:

Judge, just a very simple response is that we maintain that no deals were ever offered to this co-defendant prior to the time that he testified back. Because of all the motions that have been filed and accusations against Ms. Odom that she was essentially lying about that, not being honest and forthright prior to and during the Dean trial. After the Dean trial was over I asked her to just give me the Gaston files. . . . Judge, no offer was made in this case to Mr. Gaston until – I can't tell you the exact date. It was a couple of months before he actually pled in 2015.

Transcript of hearing on motion for new trial (NT Tr.) p. 6, line 20 – p. 7, line 9). Solicitor Stumbo advised Judge Addy the plea bargain reached with Gaston was a straight up plea “to a bunch of burglary seconds.” NT Tr. p. 7, lines 15-23.

Solicitor Stumbo denied Dean's allegation of some covert deal: “All three of us would deny that, Judge. [Assistant Solicitor Elizabeth White] and Ms. Odom have never been dishonest with me before and have always been forthright. I don't expect them to make anything up in that regard to this case. Never at any time did they say they made any kind of offer to Mr. Gaston. He was cooperative from the beginning.” NT Tr. p. 8, lines 1-6. Solicitor Stumbo noted Gaston received the same offer Dean received prior to his trial, reducing the first-degree burglary charge and allowing a straight up plea to second-degree burglary. NT Tr. p. 8, lines 6-11. Solicitor Stumbo confided he was surprised Gaston did not receive prison time. NT Tr. p. 8.

As to Gaston's sentence, Solicitor Stumbo advised Judge Addy, “We in no way suggested that probation was an appropriate sentence. We in no way negotiated that, nor recommended it.” NT Tr. p. 10, lines 8-10.

Judge Addy responded:

And on the first question about a deal for any of the testifying co-defendants, Solicitor, I concur with you. I don't see where the Court has any reason to doubt the representations that have been made by the attorneys for the State. The problem the Court runs into, and, again, I know that we are all dealing with a very significant number of cases. We forget sometimes what is said. We forget sometimes, unless it's written down and put in the clerk's file, we forget what may have been ordered or may have been required of the parties. And I don't believe that you were, – you yourself were present. . . . [A]nd when the Court was informed that . . . Judge Russo, had dealt with the sentencing of Mr. Dean, I even replied back that my recollection was that I had simply requested to try and stay apprised of the situation. . .

NT Tr. p. 10, line 20 – p. 11, line 16.

Judge Addy advised Solicitor Stumbo:

[W]hat this Court is struggling with more than anything else is the integrity of the Court, not so much your integrity, Solicitor. That's not – that's beyond question. But the Court is more concerned about the promises that I had made to Mr. Dean, or the Court had made to Mr. Dean, to retain jurisdiction over the other co-defendants.

NT Tr. p. 12, lines 10-23.

Before Solicitor Stumbo explained the discrepancies, Judge Addy advised Dean's counsel the following:

Clearly the transcripts do reflect that I retained jurisdiction. . . . I firmly – it is being represented to me that the fact that I have retained jurisdiction was not communicated to the Solicitor. I believe the Solicitor when he says he didn't recall it. And that's very easy to believe because I – you know, this was a big case. I knew that we had had this hanging out here for some period of time. And even knowing it was a big case, even knowing that this motion for new trial was hanging out here or a downward departure in sentence was hanging out there, my recollection got cross wired.

NT Tr. p. 15, lines 5-23.

Judge Addy advised the attorneys he felt he needed to take responsibility because he felt it was his job to put something in the clerk's file assuming jurisdiction of the co-defendants' cases. Judge Addy noted he did not anticipate Ms. Odom leaving the Solicitor's Office. Judge Addy advised he was inclined to grant Dean a new trial. NT Tr. p. 16; see also NT Tr. p. 11, line 22 – p. 12, line 3.

Judge Addy further clarified his rationale for granting the new trial to Solicitor Stumbo as follows:

And quite honestly, the Court is basing this motion on the assurances which the Court gave to Mr. Dean as opposed to any assurances which your office may have made to anyone or may not have made to anyone else. . . . Your integrity, I have no reason to doubt it.

NT Tr. p. 8-22.

Dean's counsel noted Sheek's statement to Judge Russo that the State promised to advise the Court about Gaston's cooperation. Likewise, Solicitor Stumbo made a similar characterization in a subsequent e-mail between Judge Addy, Judge Russo, and the parties. NT Tr. p. 13, lines 15-21. In response, Solicitor Stumbo clarified:

In the email I indicated that she, referring to Ms. Odom, stated on the record as an officer of the Court that Mr. Gaston was told his cooperation would be considered and taken into account the charges were dealt with at a later date. After the email was sent, Ms. Odom actually corrected me because she looked at this said I didn't even say that. The reason I put that in the email, Judge, because typically if I had been dealing with this case before and just my practice had always been to relay that to a co-defendant that was going to testify and then I would indicate to the Court the same thing to the defense counsel. She indicated to me that she doesn't even go to that point. She doesn't even tell them they're – I guess there's an assumption

that can be made that their testimony will be taken into consideration. But I just wanted to clarify that was probably in my email to Your Honor. Ms. Odom corrected me and said she didn't even go to that point. She just basically said you can testify and the Court will figure it out later. So I just wanted to correct that. That was not a representation Ms. Odom made. It was a false assumption by when I responded to Mr. Grose's email.

NT Tr. p. 19, lines 2-23.

ARGUMENT

The trial court erred as a matter of law by granting Respondent a new trial when no right of Respondent was violated and the trial court found no discovery violation occurred.

Respondent Dean's motion for new trial was premised upon the allegation of a discovery violation by the State. Judge Addy declined to find a discovery violation, emphasizing his satisfaction with the prosecution's earnest representations. Nonetheless, Judge Addy granted a new trial, not based on any action or inaction by the State, but over concerns he promised to retain jurisdiction over Dean's co-defendant and felt responsible for breaking that promise. However, Dean does not have a legitimate interest in Judge Addy retaining jurisdiction over a co-defendant and was not entitled to a new trial where, in fact, he received a fair one.

"A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons." State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989). The instant case lacks a manifest necessity that validates the extreme measure of impeaching a jury's verdict.

Dean's motion for new trial was based on his counsel's unflappable belief the State made a secret deal for leniency with Dean's co-defendant, Adrian Gaston. However, the new trial was not granted based on Dean's baseless allegation that the State failed to disclose a plea bargain. Judge Addy clarified, "I don't see where the Court has any reason to doubt the representations that have been made by the attorneys for the State." New Trial Motion (NT) Tr. p. 10, lines 20-24. Judge Addy, expressing his concerns, explained, "[W]hat this Court is struggling with more than anything else is the integrity of the Court, not so much your integrity, Solicitor." NT Tr. p. 12, lines 10-12.

He explained he was “more concerned about the promises that I made to Mr. Dean, to retain jurisdiction over the other co-defendants.” NT Tr. p. 12, lines 13-16.

As shown above, Judge Addy granted Dean a new trial solely because Judge Addy failed to retain jurisdiction over Dean’s co-defendants, not because of a discovery violation. Judge Addy’s desire to adhere to his previous statement to Dean is understandable. However, Dean was not entitled to a new trial because Dean does not have a legitimate stake in the disposition of his co-defendants’ charges or the right for his co-defendants to go before the same judge.

A State’s appeal from the grant of a new trial is reviewable when, as in this case, there is an error of law. The test is set out by the Supreme Court in State v. Smith, 383 S.C. 159, 679 S.E.2d 176 (2009) as follows:

[W]e must resolve whether the State had the right to appeal the trial judge’s order. The State may only appeal a new trial order if, in granting it, the trial judge committed an error of law. . . . When determining whether an error of law exists, and therefore whether the State has the right to an appeal, it is necessary to consider the merits of the case.

Smith, 383 S.C. at 165-166, 679 S.E.2d at 180; *accord* State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); State v. Des Champs, 126 S.C. 416, 120 S.E. 491, 492 (1923) (“[W]here the grant of a new trial in a criminal cause is predicated wholly upon error of law, we think an appeal by the state will lie.”); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (a trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support).

In State v. Benton, 85 S.C. 107, 67 S.E. 143 (1910), the trial court granted a new trial based on an irregularity, the absence of a seal for the writ of venire. The Supreme Court reversed, noting

that an irregularity in a writ of venire facias is insufficient to set aside a verdict absent injury to the party from the irregularity or objection made before the verdict. Id. Accordingly, the Supreme Court reversed the trial court because the reason provided for granting a new trial was not a sufficient one. Likewise, Judge Addy granted a new trial on an insufficient basis, concern over a promise to Dean, not a concern over whether Dean received a fair trial; and therefore, he made an error of law.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the trial court's grant of a new trial, and the judgment and conviction should be affirmed.

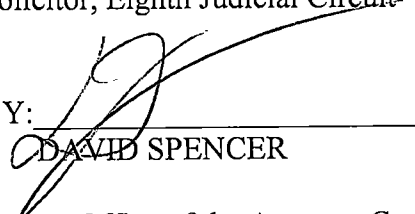
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 22, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Frank R. Addy, Circuit Court Judge

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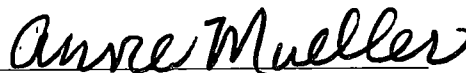
Respondent.

PROOF OF SERVICE

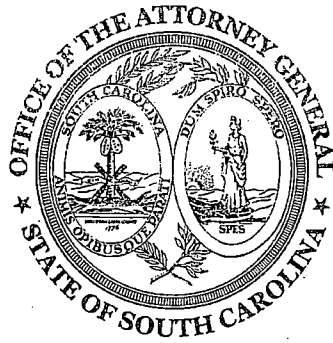
I, Anne Mueller, certify that I have served the Initial Brief of Appellant on Respondent by depositing one copy of the same in the United States mail, postage prepaid, addressed to his attorney of record E. Charles Grose, Jr., Esquire, 404 Main Street, Greenwood, South Carolina 29646.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of May, 2017.



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May 22, 2017

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MAY 22 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: The State v. Edward Dean
Appellate Case No: 2016-001004

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the Initial Brief of Appellant, including proof of service, in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/aam
Enclosures

cc: E. Charles Grose, Jr., Esquire (with one copy)
Ms. Trisha Allen