STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LATIQUE KAREEM BRACEY,

APPELLANT

APPELLATE CASE NO 2016-002027

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in denying Appellant's motion to sever his trial from his co-defendant's, where the underlying indictments set up separate offenses against the two co-defendants and where a separate trial would have protected against prejudice and allowed Appellant the opportunity to call his co-defendant as a witness?

STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant at the September 2016 term of General Sessions for burglary in the first degree, assault and battery by mob in the third degree, pointing and presenting a firearm, and possession of a firearm during the commission of a violent crime,. R. 289. His case was called to trial on September 20, 2016 before the Honorable William Jeffrey Young, and a jury. John P. Meadors appeared on behalf of the prosecution, and Jason E. Bridges represented Appellant. Michael M. Jordan represented Appellant's co-defendant, Marcus McFadden. R. 1.

At the conclusion of the two-day trial, the jury found Appellant guilty as indicted. R. 272, l. 24 – R. 273, l. 14. Judge Young sentenced Appellant to twenty-two years' confinement for the burglary in the first degree charge, one year concurrent on the assault and battery by mob in the third degree, five years concurrent on the pointing and presenting a firearm charge, and five years consecutive for the possession of a weapon during the violent crime charge. R. 286, l. 19 – R. 287, l. 6.

This appeal follows.

ARGUMENT

The trial judge erred in denying Appellant's motion to sever his trial from his co-defendant's, where the underlying indictments set up separate offenses against the two co-defendants and where a separate trial would have protected against prejudice and allowed Appellant the opportunity to call his co-defendant as a witness.

Relevant facts

Artemis Bryant, the State's first witness at Appellant's trial, testified that he was at Tiffany Calvin's house on or about April 9, 2016. R. 76, l. 2 – R. 77, l. 3. At some point in the night or early morning, he claimed to have heard banging and yelling outside Ms. Calvin's house. R. 78, ll. 15 – 25. Bryant stated that he opened the door to talk to the people who were outside. R. 81, ll. 5 – 22. He claimed that a gun was pointed in his face, and that three men entered Ms. Calvin's house. R. 81, ll. 5 – 22. According to Bryant, the three men, which allegedly included Appellant and McFadden, started hitting him and choking Calvin. R. 81, ll. 5 – 22; R. 86, ll. 7 – 24. Bryant also claimed that Appellant put a gun to his head. R. 91, ll. 17 – 23. One of the men looked in his pocket. R. 114, ll. 7 – 10. Bryant was told to go outside, so he got into his truck and called 911. R. 81, l. 18 – R. 82, l. 9. Calvin testified that she heard a gunshot as the three men were leaving. R. 149, ll. 16 – 25.

Law enforcement was called, and Officer Rodney McFadden with the Sumter Police Department was one of the first to arrive. R. 195, l. 7 – R. 196, l. 19. After observing the scene and performing a brief investigation, Officer McFadden left the house. R. 199, ll. 13 – 20. A second 911 call was made which indicated that Appellant had later returned to the residence. R. 199, l. 21 – R. 200, l. 6. Upon returning to Calvin's address, Officer McFadden claimed that he

received a description of the car in which Appellant and the two other men had driven away. R. 200, ll. 2 – 14.

Officer McFadden located a vehicle which matched the description and pulled it over into a Dollar General parking lot. R. 201, l. 9 – R. 202, l. 1. At the time of the traffic stop, Appellant, co-defendant Marcus McFadden, and Dominique Ross were in the car. R. 206, ll. 3 – 9. A gun with a spent shell casing was located in the car. R. 204, l. 20 – R. 206, l. 2. All three men were arrested. R. 206, ll. 14 – 16.

Appellant was later indicted by a Sumter County Grand Jury. McFadden was likewise indicted but only for burglary in the first degree and assault and battery by mob third degree. R. 7, ll. 4 – 13.

Prior to trial, counsel for co-defendant McFadden moved to sever the trials. R. 30, l. 24 – R. 31, l. 1. Counsel for Appellant joined in the motion. R. 34, ll. 3 – 4. The justification for severance, as articulated by counsel, was that there were different charges facing the two co-defendants. R. 31, ll. 1 – 8. In fact, a third co-defendant, Dominique Ross, was listed as a potential witness by the State and did not stand trial with Appellant and McFadden. R. 32, ll. 1 – 11. There was concern that the two co-defendants may seek to testify against one another, and the prejudice which would have arisen had that occurred could have been avoided with separate trials:

> [T]he only way to protect against prejudice from a joint trial where statements are given is to serve those and allow each individual defendant to confront his accuser and to address or be able to call the other party or the other codefendant as a witness if that witness becomes the accuser.

R. 32, ll. 12 – 17.

Judge Young denied the motion. R. 35, ll. 11 – 12.

Discussion

A trial court should grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent a jury from making a reliable judgment about a codefendant's guilt." State v. Dennis, 337 S.C. 275, 282, 523 S.E.2d 173, 176 (1999). The judge "must carefully consider problems that may arise from a joint trial." Id. at 281 – 82, 523 S.E.2d at 176.

A motion for severance is addressed to the sound discretion of the trial court. State v. Harris, 351 S.C. 643, 652, 572 S.E.2d 267, 272 (2002); State v. Walker, 366 S.C. 643, 656, 623 S.E.2d 122, 128 (Ct.App.2005). The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion. Harris, 351 S.C. at 652, 572 S.E.2d at 272; State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. Walker, 366 S.C. at 656, 623 S.E.2d at 129; State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct.App.2002).

There is no clearly defined rule for determining when a defendant is entitled to a separate trial, because the exercise of discretion means that the decision must be based upon a just and proper consideration of the particular circumstances which are presented to the court in each case. State v. McIntire, 221 S.C. 504, 504, 71 S.E.2d 410, 415 (1952); State v. Avery, 374 S.C. 524, 533, 649 S.E.2d 102, 107 (Ct.App.2007); State v. Castineira, 341 S.C. 619, 624, 535 S.E.2d 449, 452 (Ct.App.2000), aff'd, 351 S.C. 635, 572 S.E.2d 263 (2002). A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt. Harris, 351 S.C. at 652–53, 572 S.E.2d at 273; State v. Dennis, 337 S.C. 275, 282, 523

S.E.2d 173, 176 (1999). An appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial. Hughes v. State, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001).

A defendant who alleges he was improperly tried jointly must show prejudice before an appellate court will reverse his conviction. Dennis, 337 S.C. at 281, 523 S.E.2d at 176; State v. Thompson, 279 S.C. 405, 408, 308 S.E.2d 364, 366 (1983). The rule allowing joint trials is not impugned simply because the codefendants may present evidence accusing each other of the crime. Dennis, 337 S.C. at 281, 523 S.E.2d at 176; State v. Smith, 359 S.C. 481, 489–90, 597 S.E.2d 888, 893 (Ct.App.2004). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. Hughes, 346 S.C. at 559, 552 S.E.2d at 317.

Counsel for Appellant filed a speedy trial motion, which meant the trial occurred less than six months after the incident. R. 33, ll. 22 – 24. Counsel for co-defendant McFadden strongly wished to sever the trials; Appellant likewise petitioned for separate trials but also wanted to proceed with trial in a speedy manner. There was no indication that counsel for McFadden desired that the trial occur so quickly.

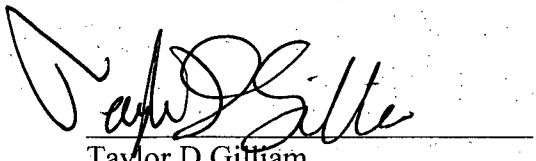
Additionally, there was a serious risk that a reliable judgment could not be made regarding the purported guilt of Appellant and his co-defendant. The jury was presented evidence which painted Appellant and McFadden in a negative light. As articulated by counsel, different charges faced Appellant and McFadden. There was evidence which pertained to just some of the charges facing Appellant, and it could have been misconstrued; the jury could have

made conclusions and assumptions about the animus of Appellant based upon the excess evidence which was presented.

Counsel for McFadden was under the impression that the two co-defendants would be tried independently. R. 31, ll. 18 – 22. That was the desire of both Appellant and McFadden, and counsel was under the impression that separate trials would occur. Trial preparation and strategic decisions were made based upon the belief that the two men would be tried separately. Additionally, Appellant wished to have a speedy trial whereas his co-defendant did not.

CONCLUSION

Appellant's convictions should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial with instructions that Appellant's trial be separate from his co-defendant Marcus McFadden.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of June, 2017.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Latique Bracey states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on September 21, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Latique Bracey.

Respectfully Submitted,

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 29th day of June, 2017.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s);
(2) Entire trial transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

June 29, 2017

Taylor D Gilliam
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ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

June 29, 2017.

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