STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Honorable George C. James, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

SHONTA HELTON,

PETITIONER

APPELLATE CASE NO. 2016-002388

BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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2.

Whether the trial judge erred by not granting appellant's motion to completely redact and remove any reference to appellant from co-defendant Gary Dargan's letters, since the references to the only woman charged were apparent, and the references to her violated appellant's right to confrontation under Bruton?

STATEMENT OF THE CASE

Appellant was indicted at the February 7, 2013, term of the Sumter County Grand Jury for the offense of accessory before the fact of murder. In the same indictment, co-defendant Gary Dargan was indicted for the murder of the victim, and for possession of a weapon during the commission of a violent crime. App. 841 – 842.

The joint trial of appellant Shonta Helton and Gary Dargan began on April 14, 2014 before the Honorable W. Jeffrey Young, and a jury. John Meadors was the assistant solicitor. Shaun Kent represented appellant Helton. Timothy W. Murphy co-defendant Dargan. App. 1.

On April 17, 2014, the jury found appellant Helton guilty of accessory before the fact to murder. The jury also found Dargan guilty of murder and possession of a weapon during a violent crime. App. 705, ll. 1-14. Judge Young sentenced appellant to thirty-five years imprisonment, and he sentenced co-defendant Dargan to life imprisonment without parole. App. 722, l. 20 – 723, l. 16.

Appellant's direct appeal was dismissed based on trial counsel's failure to properly file it. Appellant filed an application for post-conviction relief on September 24, 2014. App. 725 – 741. Appellant alleged, inter alia, that she had been denied her right to a direct appeal. The state filed a return dated January 6, 2015, asking that an evidentiary hearing be convened. App. 742 – 747.

An evidentiary hearing was convened on April 16, 2015, before the honorable George C. James, Jr. Lance Boozer represented appellant Helton. Daniel Gorely represented the state. App. 748.

An order of dismissal was filed on November 1, 2016. App. 832-840. This order did grant appellant the present White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974) appeal. App. 840.

This appeal follows.

ARGUMENT

The trial judge abused his discretion by refusing to recuse himself, where appellant's brother had been convicted of burglarizing the judge's house, since the judge's impartiality had been called into question, and the judge's reasoning that appellant was not implicated in the burglary was not the salient fact regarding the reasonable appearance of partiality.

Relevant Facts

Defense counsel Kent moved to recuse Judge Young, since appellant's brother, Jamal, had been convicted of burglarizing the home of the trial judge. Defense counsel Kent noted that his motion to recuse had also been discussed with the judge in chambers. App. 90, l. 2 – 91, l. 24.

Counsel noted that Jamal Helton, appellant's brother, pled guilty in front of now-Justice James two or three years before the present trial. Jamal Helton was represented by Jack Swerling and present trial counsel Kent at the time, and John Meadors was the prosecutor on that case also. App. 90, l. 2 – 91, l. 7.

Defense counsel noted that the question of the judge's impartiality was at question since he was the victim of a burglary perpetrated by appellant's brother. Defense counsel asked that the judge therefore to recuse himself. App. 90, l. 2 – 91, l. 24.

The judge noted that appellant Shonta Helton had nothing to do with the burglary. Defense counsel agreed with that statement. App. 91, l. 8 – 92, l. 5. Solicitor Meadors acknowledged that he prosecuted appellant's brother in the burglary of the judge's house "three or four years ago." The trial judge corrected Meadors, stating, "Actually it was in November of 2008." App. 92, ll. 7-11. This respectfully shows a keen memory of the event which is only natural given that this case involves the burglary of the judge's house.

However, the judge stated that until defense counsel told him about the situation, he did not know of the correlation between appellant Shonta Helton, and her brother, the burglar in his case. The judge found "there is no conflict of interest," and he refused to recuse himself. App. 92, ll. 18-22.

Discussion

For the reasons below, this was not a "duty to sit" case. Canon 2, Rule 501, SCACR, provides that "a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and *impartiality* of the judiciary." The commentary to this rule states "a judge must avoid all impropriety and the appearance of impropriety." (emphasis added).

Further, Canon 1, Rule 501, SCACR, provides, inter alia, that "an independent and honorary judiciary is indispensable to justice in our society." The commentary to Canon 1 provides that "*public confidence in the impartiality* of the judiciary is maintained by the adherence of each judge to this responsibility." (emphasis added).

Likewise, Canon 3, Rule 501, SCACR, provides that "a judge shall perform judicial duties without bias or prejudice." Here, defense counsel correctly moved to recuse the judge because there was the appearance of judicial bias and the appearance of partiality, since appellant's brother had burglarized the judge's house in the past.

The judge himself admitted he was a victim in this very personal crime of burglary. Although there was no contention that appellant was involved in burglarizing the judge's home, the fact remained that appellant's family member had burglarized the judge's home. This case provided a situation where appellant and her family were not unreasonable as members of the

public in thinking appellant could not get an impartial hearing before this judge because he had been a victim of a violent crime, burglary, committed by appellant's brother.

In the commentary to Canon 3, Rule 501, SCACR, it notes that "*small matters*" such as "facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others *an appearance of judicial bias.* A judge must be alert to avoid behavior that may be perceived as prejudicial." If a facial expression can give an appearance of bias -- which it can – surely appellant's brother having burglarized the judge's house can reasonably lead to an appearance of judicial bias.

Here, most respectfully to the trial judge, defense counsel properly moved to recuse him, since appellant's brother had been convicted of burglarizing the judge's home. The judge was the victim and appellant's family member, her brother, was the perpetrator of that personal despicable crime.

Appellant respectfully submits that this case provides the rare and unusual case wherein there was a reasonable appearance that the judge may not be totally impartial. Burglary is a very personal crime where the sanctity of the victim's home and his or her personal effects have been violated by an intruder.

In Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008), the Court of Appeals noted a judge had a "duty to sit" unless his or her disqualification was required. However, the Court of Appeals also noted that "no judge, of course, has a duty to sit where his impartiality might *be reasonably questioned.*" Simpson v. Simpson, 377 S.C. 519, 526, 660 S.E.2d 274, 278 (Ct. App. 2008), *citing* McBeth v. Nissan Motor Corp., U.S.A. 921 F. Supp. 1473, 1477 D.S.C. (1996).

Here, the judge's impartiality was respectfully "reasonably questioned" given that appellant's brother had burglarized the judge's home. Appellant recognizes the tension between "the duty to sit," and a situation where the judge's impartiality may reasonably be questioned, or the appearance of bias may arise. Given that the reasonable appearance of partiality existed, and the basis of the motion to recuse was reasonable, appellant most respectfully asserts that the trial judge abused his discretion by refusing to recuse himself in this case.

2.

The trial judge erred by not granting appellant's motion to completely redact and remove any reference to appellant from co-defendant Gary Dargan's letters, since the references to the only woman charged were apparent in Dargan's cover-up letters, and the references to her violated appellant's right to confrontation under *Bruton.*

Relevant Facts

The solicitor in his opening statement said that appellant got embarrassed during a party in front of her friends when the decedent, Mario Scott, hit her causing his wig to move . . . "they were laughing. And she got angry and she called Gary Dargan. And said, come kill him, Kill him. And Gary Dargan, the evidence will show, did. The slaying of Mario Scott because he embarrassed Shonta Helton." App. 62, ll. 10-19. "And that's what the case is all about for Ms. Helton. Did she urge, encourage Gary Dargan to come unload a 45 that ended the life of Mario Scott." App. 66, ll. 9-24. The solicitor maintained that Dargan sent his friend, Robert Mellette, to pick up appellant, when she was following the decedent. Mellette picked up appellant and the solicitor claimed the circumstantial evidence would show that Dargan then drove his van into the area and shot the decedent. App. 71, l. 23 – 76, l. 21.

Defense counsel Kent agreed that petitioner made a telephone call after the decedent accosted in at a drunken party. Witnesses were inconsistent as to the contents of the call. Counsel told the jurors that state would ask them to surmise and guess that the murder would not have happened, "but for her conversation . . ." Counsel asked the jurors to pay attention to whether the evidence showed Shonta called Dargan, asked him to kill somebody, and helped in the preparation or "are they going to say she made a phone call, and we don't know exactly what she said." App. 83, l. 19 – 85, l. 15.

The state's first witness, and main witness on the "kill him" telephone allegation was Tajuana Davis. Davis testified that they was a party at the home of Betty Welch on December 8, 2012. Shonta was present as was the decedent. At some point during the party the decedent argued with Shonta, and he "snatched her wig a little bit on her head. And we all kind of, you know, laughed a bit about it." App. 98, l. 6 – 109, l. 24.

Davis maintained Shonta became very angry, and that she called Gary Dargan. Davis claimed she heard Shonta say, "Gary, this N put his hands on me. Come here and kill this N. I am at Betty's house. And then that's when she started walking down the street behind him [the decedent]." App. 98, l. 6 – 109, l. 24.

Betty Ann Welch remembered that on December 8, 2012, she lived in a house with her two children and Mario Scott, the decedent. Welch had known Scott since elementary school, and they were involved in a relationship. App. 157, l. 15 – 158, l. 16. Welch had just gotten hired at the El Cheapo gas station and convenience store in Sumter, and the party -- "me and all my home girls, and him [the decedent]" -- was to celebrate her upcoming first day on the job. App. 159, ll. 19-24. Shonta Helton was one of these "home girls." App. 160, l. 16 – 161, l. 3.

Shonta allegedly started arguing with another woman, Danielle, "and Mario got into it." Mario, the decedent, apparently told Shonta that she needed to leave the party. App. 162, l. 19 – 163, l. 3.

Welch said the argument between Shonta and the decedent got "really, really bad. So me and her got into it really, really bad." Welch said she was trying to calm the argument "and then I see Mario pushed, like not pushed her, but hit her in the head and made her wig move or whatever. And then it just went on from there." App. 163, l. 22 – 164, l. 11.

Welch said that Shonta "flipped out. She started cussing. He started cussing . . . but she jumps on the phone. Calls Gary." App. 164, ll. 12-25. Welch claimed she heard Shonta say on the phone, "You need to come get this motherfucker. He just put his motherfucking hands on me and to that sort [of thing]." App. 165, ll. 2-14.

Welch said she told the decedent, "It's best you leave. So I walked him to the stop sign." App. 165, ll. 15-21. Welch maintained that she saw Shonta following the decedent down the street. App. 166, ll. 9-15.

Welch admitted she had been drinking all day long at the time, but would only acknowledge that she was "tipsy." The women at the party were in various stages of intoxication. She also admitted she was worried about the police coming to her house because of all of the noise and yelling. Welch said later that night she saw petitioner at the Club Miami. She recalled that Shonta was acting normal by that time, "kidding around," and seemed fine. Welch testified that when she left the Club Miami she saw Shonta standing beside Gary Dargan. This was at about 4:45 a.m. App. 169, l. 11 – 175, l. 5.

Welch said they drove by her house but "I seen all the police outside, and I didn't stop. I was like, take me to your house." App. 175, ll. 16-21. Welch slept at Tajuana Davis's house that night. She did not know what was going on at her house at about five o'clock that morning. App. 176, ll. 5-10.

Welch remembered: "I called one of my best friends and I went to his house. And then I woke up to Tajuana calling me, saying that Mario had gotten killed. It was all on Facebook." App. 176, ll. 11-16.

Danielle Govan also remembered the party that evening. She said there were "petty arguments. Small, simple. You can tell it was coming from people drinking too much." App.

205, ll. 15-17. Danielle testified that Betty Welch was intoxicated at the time, and that many of the other people at the party were also intoxicated. App. 206, l. 12 – 207, l. 13. Danielle opined the decedent was not as intoxicated as Welch. App. 208, ll. 3-4.

Danielle recalled the incident where the decedent pushed Shonta's head. Danielle offered "she [petitioner] just said that she knew he hit her. And she felt very disrespected. Betty came outside to try to defuse the situation. . . . So she told Mario to go ahead and leave." App. 211, ll. 5-14. Danielle said Shonta was on the phone talking at the time, telling someone she had been disrespected and that she had been hit. App. 212, ll. 3-7.

Kenyardo Bolden was also at the party that night. Co-defendant Gary Dargan was the father of her child. App. 227, ll. 15-16. Bolden claimed Shonta was very rude the entire evening, and she claimed the decedent was trying to get Shonta to "calm down or whatever . . ." App. 230, l. 1-25.

Bolden remembered a physical incident between the decedent and Shonta where "both of them were saying stuff towards each other that was very disrespectful. And he just shifted her wig a little bit or whatever. And everybody started laughing. I guess she got upset. She ran in the house. Grabbed a knife, I guess a kitchen knife. And came running down the steps on her cell phone saying this N hit me or whatever." Bolden said she saw Shonta walking with a knife and a phone in her hands. Bolden said they all followed them outside. App. 231, l. 12 – 233, l. 3.

Bolden recalled the Club Miami later that night. She saw Shonta there. Bolden said she learned the next morning that the decedent had been killed. App. 234, l. 13 – 236, l. 5. Bolden said although she saw Shonta at the Club Miami, she did not see Gary Dargan there. App. 236, ll. 6-9.

On cross-examination, Bolden admitted that Shonta never said a name of the person she alleged had hit her. Bolden said petitioner was loud, she had been drinking, but Bolden was positive that Shonta never named the person who allegedly hit her to the other person on the phone. App. 240, l. 22 – 242, l. 5.

Gary Dargan Letters

Prior to testimony about the letters the redactions pursuant to Bruton were discussed. App. 419, l. 14 – 432, l. 22. Counsel said the proposed redaction solution "resolves my objection, but it did not solve his problem." App. 427, ll. 13-20.

Marcus Mellette testified he had known co-defendant Gary Dargan for about twenty years. App. 403, ll. 17-21. Marcus testified that he was in the detention center with Gary Dargan, but that he heard from Dargan again after he, Marcus, was released. App. 408, l. 8 – 411, l. 16. Marcus testified that Dargan would call him, and also send him letters about his case. App. 411, l. 17 – 417, l. 20.

The Dargan letters urged Marcus to have everyone remain steadfast in a cover-up, and be careful what they told the police. There was no hiding from the fact that Dargan was saying that appellant was part of the cover-up when he continuously used the N word referring to the cover-up. App. 435, l. 5 – 44, l. 18. Dargan did the same referring to Bernard who was allegedly involved that night with appellant. App. 446, l. 2 – 449, l. 3. Another letter referred to reading his and "my girl's [appellant's] statement, you can see nobody was pointing the finger at B. It talked about "a bitch can stick to the script when detectives apply more pressure to her screaming that life, *because she is charged with a crime. You can't imagine the shit they are coming at her with and she kept it 100 percent. But the N I grew up with, got money, fuck bitches and whole 9, folded on a N like he was a bitch.*" App. 450, l. 11 – 455, l. 1. (emphasis added). If there was

ever any doubt that co-defendant Dargan was referring to appellant in these letters that doubt would be removed when Shonta was named directly in later letters.

For example, Marcus identified a February 15, 2014, letter to him. In the letter, Dargan asked Marcus to apparently have a witness change his story. He said this witness "can't say he saw Mario [the decedent] and old girl on Dingle Street arguing. He can't say he picked her up off Dingle Street (he picked her up at the curb). Two, this is the most important shit. He can't say he seen the van pass by him, drive fast on Dingle and South Sumter." App. 461, l. 12 – 462, l. 17. Dargan added,

> "He can say (He can say that he was going -- he was calling me asking me what the fuck done happen because he [was] hearing all types of crazy shit about somebody getting killed. *Then once he heard the rumors that I did that behind* ***Shonta*** *because Mario hit her. He got scared because he didn't want to have anything to do with it. And he -- and because he picked her up and he was thinking that that would be fucked up, the police might try to say he had something to do with it . . . Now I don't know what the fuck happened to Mario [the decedent] because all he did was pick* ***Shonta*** *up from by the curb. Bring her to and holler at me. Then drop her off south side at her friend's house. That's all he did.* He don't know shit about the murder or didn't know a murder was going to happen or didn't know anything was going to happen to Mario. *He didn't find out that Mario and* ***Shonta*** *had got into something until the next day* and we started hearing rumors he didn't have shit to do with this."

App. 462, l. 2 – 463, l. 18. (Emphasis added).

Closing Argument

The solicitor made much of the Dargan letters in his closing arguments. The solicitor even used the word "corroborated" several times regarding the letters and the "facts" of this case. App. 647, l. 2 – 654, l. 13. The solicitor argued that Gary Dargan killed the decedent because Shonta was angry at the decedent because of the incident at the party. The Dargan letters would lead a reasonable juror to think that they corroborated the state's case as was argued by the solicitor in his closing argument. The letters, as seen above, reference the fact that Dargan killed

the decedent "because Mario hit her." The letters reference Shonta being picked up "by the curb. Bring her to and holler at me. Then drop her on the south side at her friend's house." App. 462, l. 20 – 463, l. 10.

Discussion

These letters should have been redacted to remove all apparent references to Shonta Helton where she had no opportunity to confront and cross-examine co-defendant Dargan. As seen above, it was apparent that Dargan was including Shonta in his desire and urging of a cover-up, he expressed disappointment with her at other times, and directly talked about her alleged role in the crime in other portions of the letters. Appellant Helton's right to confrontation was violated by the lack of redactions, and removing references to her -- the only **"her"** charged in this case. See State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009); State v. McDonald, 419 S.C. 133, 771 S.E.2d 840 (2015)(referring to "he" where it was apparent McDonald was one of the three men on trial).

Moreover, the judge failed to give a limiting instruction in this case that the Dargan evidence could only be used against him. See Bruton v. United States, 391 U.S. 123 (1968). Appellant submits that is a factor that must be taken into account in the prejudice analysis, and cannot be blamed on appellant since he did not want these Dargan letters into evidence in the first place because he knew they implicated appellant.

This Court has recently emphasized a defendant's right to confrontation in cases such as this one. See State v. McDonald, 419 S.C. 133, 771 S.E.2d 840 (2015), State v. Henson, 407 S.C. 154, 162, 754 S.E.2d 508, 512 (2014).

In State v. McDonald, this Court found the Bruton error harmless because McDonald confessed to the crimes. While there was other evidence implicating McDonald in the crime, McDonald's confession was the dominant factor in this Court finding the Bruton error harmless.

Here, there was not any confession from petitioner Helton. Further, the Gary Dargan letters did constitute highly prejudicial hearsay which the jury easily could have impermissibly interrupted as legitimate corroboration evidence in violation of appellant's right to confrontation.

The Bruton error in this case was as bad as that in McDonald if not worst. There was little to no doubt that Dargan was referring to appellant being part of the crime, and key to the cover-up. Then, of course, appellant Shonta Helton was named directly without any redaction. As in McDonald there could be no realistic doubt that the co-defendant's letter here was referring to appellant, and implicating her in the crime.

Finally, the Bruton errors were far from harmless. Davis claimed Shonta asked Dargan on the telephone to kill the N, meaning the decedent. Other eyewitness to the phone call did not make this direct claim about the contents of the telephone call. The testimony of the witnesses was inconsistent, and they were all in various degrees of serious intoxication.

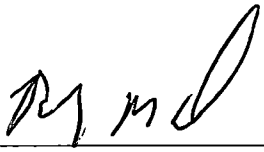
This is a highly unusual case where Shonta Helton was convicted of being an accessory before the fact of murder based mainly on an alleged drunken statement in a telephone call. Until State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007), the state could have seemingly sought the death penalty against appellant for what Davis claimed appellant said in the drunken telephone call.

The trial judge had the right to try Dargan and Shonta Helton together, but what occurred with the subsequent Bruton errors denied appellant Helton her right to confront and cross-

examine her co-defendant, and it denied her the right to a fair trial. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Sumter County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Honorable George C. James, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

SHONTA HELTON,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Appellant Pursuant to White v. State has been served on Shonta Helton, #326415, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 14th day of July, 2017.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of July, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.