THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Opinion No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017)

Appellate Case No. 2013-000091

THE STATE, ...RESPONDENT

v.

MICHAEL ANTONIO WILLIAMS, ...APPELLANT.

RETURN TO PETITION FOR REHEARING

On November 15, 2017, this Court issued an unpublished opinion that affirmed Appellant Williams' convictions for seven counts of attempted murder, one count of second degree assault and battery by mob, and one count of conspiracy. *State v. Williams*, Op. No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017). On November 29, 2017, Williams submitted a Petition for Rehearing and by letter dated December 6, 2017, this Court requested that Respondent (the State) submit a return within ten days of the date of the letter. This return in opposition to the petition for rehearing now follows. The procedural history, the statement of facts, and the

substantive arguments recited in the Final Brief of Respondent are hereby incorporated by reference.

The State respectfully asks this Court to deny the petition for rehearing pursuant to Rule 221(a), SCACR, because it did not overlook or misapprehend any points that would warrant further consideration of this matter. Indeed, in regard to each of Williams' three issues on appeal, the Court employed a straightforward application of existing precedent to the facts and circumstances of the Williams' case in finding no reversible error. Rehearing should be denied.

Issue One

In his appeal to this Court, Williams argued the trial court erred in allowing the State to admit testimony referencing the term "gang." Specifically, he complained about testimony from Investigator Brandon Brown of the Greenville County Sheriff's Office (GCSO). This Court found no error, relying on the principle discussed in *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) that the admission of improper evidence is harmless when it is merely cumulative to other evidence admitted during trial. The Court accurately noted that evidence referencing gangs was admitted numerous times without objection from Williams, and therefore testimony from Investigator Brown referencing the term "gang," even if error, was merely cumulative and therefore harmless. The State continues to maintain the position argued in its Final Brief that the trial court properly admitted the testimony from Brown because it was relevant, part of the res gestae of the crime as proof of identity, intent, and motive, and its probative value was not outweighed by the danger of unfair prejudice. (Final Brief of Respondent, p.25-p.30). Additionally, the State submits this Court properly affirmed on the alternative basis that the testimony from Brown was cumulative and therefore harmless.

At trial, after calling all of the victims of the shooting as well as numerous officers involved in the immediate response and the subsequent investigation leading to the arrest of Williams and his codefendants, the State called Investigator Brandon Brown to the stand. Booker raised an objection as to how that witness would be identified to the jury. He explained that Brown is in the gang investigation unit and objected to Brown being identified this way. Booker complained that to do so would imply Brown was called in because police were investigating a gang, and that the State had not laid any foundation from any witness that the defendants were actually in a gang. The trial judge noted the objection for the record and the fact that all codefendants had joined in the objection; however, the objection was overruled. (R.p.472, line 7-p.473, line 23).

Investigator Brown then took the stand. He testified he was a "gang investigator" and that his responsibilities include maintaining all gang intelligence throughout Greenville County and knowing the players and entities involved as they pertain to gangs and violent crime. Brown explained he is often called to assist if an incident might involve a gang. He responded to the attack at the LC and began gathering information to see if any of his gang knowledge would help the investigation. Brown learned about the prior incident at another location involving what people were calling the "Folk Boys" who all showed up together wearing black. Several witnesses mentioned the name "Mikey" but the name did not stand out as someone he associated with a gang. Meanwhile, another investigator learned an individual named Brandon Edwards had been shot at the previous location. Brown testified that Edwards' name definitely had significance because he knew Edwards to be associated with several notable individuals in Greenville, particularly Young. He described Edwards and Young as possibly "family." (R.p.475-p.479). Young objected to the testimony "involving this whole gang thing" and

testimony about himself and Edwards. He argued it was prejudicial without a foundation. The objection was overruled and Brown continued explaining the investigation. (R.p.479, lines 14-23).

Brown next looked at Young's Facebook page, particularly a public conversation he had been having with Williams and a photo he posted that was titled "The Family." The photo came in without objection from Booker, Williams, or Young, and over the objection of Sadler. Brown testified they used the photo to start determining exactly which individuals associated together. After many hours and days of trying to identify and track down people in the photo, Brown was able to interview Johnson, who he said was very forthcoming with the legal names and nicknames of people in the photo. This led them to Mack, who was involved with Young either romantically or as a friend. Mack shared more useful information about names and vehicles, and she told Brown she saw several guns in the residence where she and Young were staying. Mack also revealed that her roommate, Kerns, was involved with Booker, which was a new name that led Brown to more people from the photo. Mack told Brown the guns had been brought into the residence by Booker in a black duffle bag. Based on all the new information, Brown obtained an arrest warrant for Williams and subsequently got a search warrant for the residence. When executing the search warrant, the police found paperwork belonging to Young as well as two canvas gun holsters. Although Kerns was originally uncooperative, she eventually helped the police locate the guns Mack had seen in the residence. (R.p.480-p.494).

On cross-examination by Booker, Brown admitted he was familiar with the Hardliners. He testified he had seen the photograph of them flashing hand signs and admitted that is something that can be common among gang members. Brown also admitted the police found weapons inside some of the victims' vehicles. (R.p.494-p.499). Under redirect examination

from the solicitor, Brown identified three photographs of groups of people who were making hand signs he recognized as being associated with gangs. The photos were admitted over objection and Brown identified Williams, Booker, and Hogan in those photos. (R.p.499-p.504). The trial judge then excused the jury to allow the defendants to argue their specific objections to the photos on the record. Counsel for Young renewed his objection to the prejudicial nature of gang information and the objection was overruled. The trial judge noted the photographs came from Young's cell phone. (R.p.499-p.507).

In his Petition for Rehearing, Williams contends the objectionable testimony from Investigator Brown was the first testimony by a witness regarding gangs and that once the trial court allowed such testimony any further objection by trial counsel about references to gangs would have been fruitless. He argues Brown's testimony was more prejudicial than that of other witnesses who came later because Brown specialized in gangs and contends Brown's testimony likely carried more weight with the jury because he was with law enforcement and had an "authority identification." Williams argues this Court "misapprehended that the gang testimony from Brown was more prejudicial and not harmless and was not cumulative."

None of these arguments were made to the trial court as a basis for Williams not raising further objections to the evidence referencing gangs that was admitted throughout the trial. Indeed, Williams never asked the trial court if he would somehow be excused from making further objections to the term "gang" as the trial proceeded. While Brown was still on the stand, codefendant Booker appears to have independently raised the issue of gangs during his cross-examination by suggesting the victims of the shooting were themselves part of a gang called the Hardliners. (R.p.452-p.457). Similarly, under cross-examination from Young, codefendant Larry Johnson repeatedly used the term gang, including a reference to Brown as a "gang

investigator." (R.p.545-p.549). Investigator William Whitlock of the GCSO testified he assisted in "gang investigations" when describing his role in Williams' case. (R.p.466, lines 16-18). No objections were raised to these examples of "gang" related testimony. This Court properly concluded Brown's use of the term "gang" could not have been prejudicial because it was cumulative.

Issue Two

In his appeal to this Court, Williams argued the trial court erred by effectively coercing co-defendant Bruster to testify against him by threatening to vacate Bruster's guilty plea after finding Bruster's initial testimony violated his plea agreement. This Court found no error, relying on the principle discussed in *State v. Stanley*, 365 S.C. 24, 30-32, 615 S.E.2d 455, 458-59 (Ct. App. 2005) and *State v. McKay*, 89 S.C. 234, 236, 71 S.E. 858, 859 (1911) that the actions were appropriate under the trial court's duty to supervise and control witnesses. The State continues to maintain the position argued in its Final Brief that the trial judge acted well within his discretion in advising Bruster of the very real consequences of his actions under contract principles, as well as in doing so in the performance of his duty to supervise and control witnesses. (Final Brief of Respondent, p.31-p.33). In his Petition for Rehearing, Williams claims: "This Court misapprehended the significance that Bruster was facing LWOP if he did not do what the trial court was coercing him to do." However, the severity of the consequences facing a witness for violating the terms of his plea agreement should have no bearing on the propriety of the trial court's actions in supervising and controlling that witness at trial by ensuring he knows of those consequences. Here, those actions were entirely appropriate. This Court properly found no error in the trial court's actions and properly affirmed.

Issue Three

In his appeal to this Court, Williams argued the trial court erred in denying his motion for a mistrial based on juror misconduct in the form of premature jury deliberations. He contended that where the original note said a juror had used the phrase "he's going down," and no witness had used those words during trial, it "indicated that one of the jurors had already made a decision before the case went to the jury, and was discussing her decision with another juror." Williams went on to claim: "There was a reasonable probability that other conversations were held about the case prematurely." He argued he was denied a fair trial "because there was no way to know all of the jurors' discussions." This Court found no error, relying on our Supreme Court's opinion in *State v. Aldret*, 333 S.C. 307, 312-16, 509 S.E.2d 811, 813-15 (1999) and the procedure established therein to address an allegation of juror misconduct that arises during trial. The State continues to maintain the position argued in its Final Brief that the trial court followed the proper procedure as set forth in *Aldret* to explore the allegation of juror misconduct and that as a result, the trial judge committed no error and Williams suffered no prejudice. (Final Brief of Respondent, p.34-p.38). In his Petition for Rehearing, Williams offers no specific challenge to this Court's conclusion that the trial court followed the procedure outlined in *Aldret*. The State submits this is because the procedure was followed in its entirety. Upon following this procedure, the trial court concluded Williams was not entitled to a mistrial. He failed to establish the jury engaged in premature deliberations in his case and failed to establish he suffered any prejudice as a result of the brief conversations described by the jurors during voir dire. This Court properly found no error in the procedure or the denial of Williams' motion for a mistrial, and properly affirmed.

Conclusion

WHEREFORE, based on the foregoing arguments and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court deny Appellant's petition for rehearing.

Respectfully submitted,

ALAN WILSON
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J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

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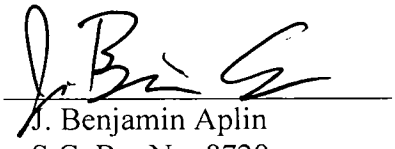
BY: 
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Columbia, South Carolina
December 13, 2017

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PROOF OF SERVICE

I, Angela Bennett, Legal Coordinator, hereby certify that I have served the within *Return to Petition for Rehearing*, dated December 13, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

LaNelle C. DuRant, Appellate Defender
S.C. Commission on Indigent Defense
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I further certified that all parties required by Rule to be served have been served. This 13th day of December, 2017.

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State v. Michael Antonio Williams
Appellate Case No. 2013-000091

Dear Ms. DuRant:

I am enclosing one (1) copy of the Return to Petition for Rehearing in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division