

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Allendale County

The Honorable Perry M. Buckner, Circuit Court Judge

RECEIVED
APR 16 2018
SC Court of Appeals

THE STATE,

Respondent,

v.

JAYCOBY TERREAK WILLIAMS,

Appellant.

Appellate Case No. 2017-000872

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SAMUEL M. BAILEY
Assistant Attorney General
S.C. Bar No. 103131

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ISAAC MCDUFFIE STONE, III.
Solicitor, 14th Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

APPELLANT'S STATEMENT OF ISSUE ON APPEAL.....1

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

SUMMARY OF ARGUMENT4

ARGUMENT.....5

 I. How The Issue Arose At Trial.....5

 II. Standard Of Review.....7

 III. Harmless Error—Any Error By The Trial Court In Not Permitting
 Appellant To Cross-Examine The State’s Witness Regarding The Potential
 Sentences That Witnessed Faced On Two Pending Charges Did Not
 Prejudice The Outcome Of The Case Because The Testimony Given By
 The Witness Was Merely Cumulative To Other Evidence Presented8

CONCLUSION.....11

DESIGNATION OF MATTER

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Federal Cases

Delaware v. Van Arsdall, 475 U.S. 673, 89 L.Ed.2d 674 (1986).....8

State Cases

State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006).....7

State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).....7

State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012).....8, 9

State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994)8

State v. Jenkins, 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996).....7

State v. McEachern, 399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012)7

State v. Miller, 258 S.C. 573, 190 S.E.2d 23 (1972).....7

State v. Morris, 376 S.C. 189, 656 S.E.2d 359 (2008)6

State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991).....8

State v. Whatley, 407 S.C. 460, 756 S.E.2d 393 (Ct. App. 2014).....9

State v. Williams, 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008).....7

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial judge erred in refusing to allow appellant to cross-examine the State's key witness about the potential sentences he faced on pending charges?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. Whether any error by the court in not permitting appellant to cross-examine the State's key witness about the potential sentences the witness faced on two pending charges prejudiced the outcome of the trial?

STATEMENT OF THE CASE

Jaycoby Williams (“Appellant”) was indicted by the Allendale County grand jury on the charge of murder (2015-GS-03-00086). (Tr. p. 12, ll. 9-11). At trial, Appellant was represented by Ian Deysach, Esq. Assistant Solicitors Korey Williams, Esq., and Brian Hollen, Esq., prosecuted the case on behalf of the Fourteenth Circuit Solicitor’s Office. (Tr. p. 2). Appellant was tried before the Honorable Perry M. Buckner, April 3rd, through April 5th, 2017. (Tr. p. 1). At the conclusion of the trial the jury found Appellant guilty of murder. (Tr. p. 367, ll. 17-22). Following the conviction, Judge Buckner sentenced Appellant to thirty-five (35) years. (Tr. p. 379, ll. 8-13). Appellant then filed a timely Notice of Appeal. David Alexander Esq., with the Division of Appellate Defense, submitted Appellant’s Initial Brief on January 30, 2018. This Brief of Respondent follows.

STATEMENT OF THE FACTS

In the early evening of May 26, 2015, the victim, James Spellman, was outside his apartment in Allendale, speaking to his cousin, Dequincy Best. (Tr. p. 129, l. 17 – p. 131, l. 8; tr. p. 182, l. 24 – p. l. 3). At some point during their conversation Jaycob Williams (“Appellant”) arrived at the apartment complex in a blue Ford Focus. (Tr. p. 147, l. 24 – p. 148, l. 13; tr. p. 179, l. 20 – p. 181, l. 12). Appellant and the victim had a tenuous relationship because the victim was dating and living with Appellant’s longtime girlfriend and mother of his children. (Tr. p. 123, ll. 5-22; tr. p. 128, l. 10 – p. 129, l. 16). When Appellant arrived at the apartment complex, he greeted the victim’s cousin. However, he did not greet the victim. (Tr. p. 149, ll. 13-24). The victim’s cousin noticed during their interaction that Appellant had a pistol tucked into his pants. (Tr. p. 149, l. 17-22). After greeting the victim’s cousin, Appellant walked a short distance then turned and fired a single shot into the victim. (Tr. p. 150, ll. 6-12; tr. p. 184, l. 8 – p. 187, l. 1). He then positioned himself over the wounded victim in an attempt to finish him, but backed away after several witnesses yelled at him to stop. (Tr. p. 150, l. 14 – p. 152, l. 17; tr. p. 185, l. 1 – p. 186, l. 16). After Appellant fled the scene the victim’s cousin loaded the victim into his car and drove him to the Allendale County Hospital, however, the victim died shortly after arriving. (Tr. p. 152, l. 25 – p. 155, l. 25; tr. p. 137, l. 4 – p. 138, l. 19).

SUMMARY OF THE ARGUMENT

Any error in not permitting Appellant to impeach the witness with potential penalties the witness faced on two pending charges was harmless. The excluded evidence was merely cumulative to properly received impeachment, and, furthermore, the witness was not crucial to identification. The Prosecution presented testimony from an additional eyewitness who knew Appellant prior to the murder and positively identified him as the shooter.

ARGUMENT

I. How The Issue Arose At Trial.

At trial, the prosecution called Rahem Devoe as a witness. (Tr. p. 176, ll. 22-25). Devoe had arrived at the apartment with Appellant immediately prior to the murder. (Tr. p. 181, ll. 3-5). Devoe was not charged with any connection to the murder of James Spellman. Prior to the prosecution calling Devoe as a State's witness, Defense Counsel requested a hearing outside the presence of the jury. (Tr. p. 173, l. 1-5). Defense Counsel sought to impeach Devoe with two prior charges *and* the potential sentences he faced should he be convicted of those charges. (Tr. p. 173, l. 6 – p. 176, l. 7). One charge was for drug possession and the other was for armed robbery. (Tr. p. 174, l. 14 – p. 175, l. 9). Devoe also had a prior conviction for failing to stop for blue lights. (Tr. p. 174, l. 18-21). In regards to the potential sentences the witness faced on the charges, the defense felt the issue was relevant to show Devoe's bias. (Tr. p. 175, ll. 18-22).

The trial court did not permit Defense Counsel to impeach the witness on the drug charge after concluding that this particular charge did not bear on the witness's character for truthfulness. (Tr. p. 175, ll. 5-9). However, the court did permit Defense Counsel to impeach Devoe with the charge of armed robbery and his conviction for failing to stop for blue lights. (Tr. p. 174, l. 14-24). Lastly, the court denied Defense's request to impeach Devoe with the potential sentences he faced on the pending charges. In coming to this conclusion, Judge Buckner stated “. . . I felt that the penalty was a matter for the court, and therefore, not a matter” (Tr. p. 175, ll. 13-14).

During his testimony Devoe stated that he had been with Appellant prior to the murder. (Tr. p. 179, ll. 3-23). He testified that he was at his uncle's house when Appellant and several other acquaintances arrived in a blue Ford Escort. (Tr. p. 179, l. 21 – p. 180, l. 12). Devoe stated

that he left with Appellant and acquaintances and they proceeded to the Pinewood Apartments. (Tr. p. 180, l. 13 – p. 181, l. 12). Devoe testified that when they arrived he proceeded to go visit a cousin who lived in the upstairs apartments. (Tr. p. 181, ll. 7-16). He passed by the victim as he went up the stairs toward his cousin's apartment. (Tr. p. 182, l. 24- p. 183, l. 15). Shortly thereafter, Devoe testified that he heard a gunshot. At this point he turned around and witnessed Appellant standing over the victim preparing to shoot a second time. (Tr. p. 182, l. 17 – p. 187, l. 9).

The prosecution also presented testimony from two additional witnesses. Dequincy Best was with the victim when Appellant shot him. (Tr. p. 142, l. 8 – p. 143, l. 1). Best also knew Appellant prior to the murder. Best testified that on May 26, 2015, he and the victim were chatting near the stairwell outside the apartment where the victim and his girlfriend (also Appellant's ex-girlfriend) were living. (Tr. p. 143, l. 18 – p. 145, l. 6). He stated that during this period Appellant and Rahem Devoe arrived to the apartments in a blue Ford Focus. (Tr. p. 147, l. 24 – p. 148, l. 13). Best confirmed that Devoe came up the stairs followed shortly by Appellant who he noticed was carrying a pistol. (Tr. p. 149, ll. 9-24). He said that Appellant came up the stairs and greeted him. (Tr. p. 148, ll. 13-16). Best testified that after Appellant greeted him Appellant began walking back down the stairs. (Tr. p. 150, ll. 3-5). At that point Best turned around to follow Devoe up the stairs and heard a gunshot. (Tr. p. 150, ll. 8-12). He then turned around to find Appellant standing over the wounded victim, pointing a gun at him. (Tr. p. 150, ll. 14-16).

Lastly, the State presented Franklin Williams who resided at the apartments where the shooting took place. (Tr. p. 104, ll. 10-12). At the moment of the shooting, Williams was inside talking to family on the phone. (Tr. p. 104, l. 18 - p. 105, l. 18). He testified that he peaked out

the window after hearing the shot and spotted a small blue car retreating from the apartment. (Tr. p. 105, ll. 19-25).

II. Standard Of Review

“The trial court has broad discretion in determining the general range and extent of cross-examination.” *State v. Jenkins*, 322 S.C. 360, 474 S.E.2d 812, 814–15 (Ct. App. 1996) (citations omitted). “[T]rial judges may impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness's safety, or interrogation that is repetitive or only marginally relevant. *Jenkins*, 322 S.C. at 474 S.E.2d at 814–15 (citation omitted). “[T]he exercise of such discretion will not be disturbed except in cases of manifest abuse or injustice.” *State v. Miller*, 258 S.C. 573, 577, 190 S.E.2d 23, 25 (1972); *see also State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247–48 (2000) (“Admission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion.”). “An abuse of discretion occurs when the trial court's decision is based on an error of law or upon factual findings that are without evidentiary support.” *State v. McEachern*, 399 S.C. 125, 136–37, 731 S.E.2d 604, 609–10 (Ct. App. 2012) (citing to *State v. Morris*, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008)). Moreover, “the court's decision will not be reversed on appeal absent a showing of prejudice.” *Colf*, 337 S.C. at 625, 525 S.E.2d at 247–48. “Thus, an insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.” *State v. Williams*, 380 S.C. 336, 343–44, 669 S.E.2d 640, 644 (Ct. App. 2008) (citing *State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006). “In determining whether error is harmless, the circumstances of each individual case are to be considered.” *Id.*

III. Harmless Error—Any Error By The Trial Court In Not Permitting Appellant To Cross-Examine The State’s Witness Regarding The Potential Sentences That Witnessed Faced On Two Pending Charges Did Not Prejudice The Outcome Of The Case Because The Testimony Given By The Witness Was Merely Cumulative To Other Evidence Presented.

The Supreme Court of South Carolina has held that “[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis.” *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012); *see also State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (finding no prejudice in the trial court’s refusal to allow further inquiry into coconspirator’s potential sentences where the defendant “amply demonstrated any bias on the part of [the two conspirators]”). In *State v. Gracely* the South Carolina applied the five factors set forth in the U.S. Supreme Court case of *Delaware v. Van Arsdall* to determine whether a violation of the Confrontation Clause constitutes harmless error. *See Gracely*, 399 S.C. at 375, 731 S.E.2d at 886 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)). In *Van Arsdall* the U.S. Supreme Court set forth:

Whether such an error is harmless in a particular case depends upon a host of factors.... The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case.

Gracely, 399 S.C. at 375, 731 S.E.2d at 886 (quoting *Van Arsdall*, 475 U.S. at 684, 106 S.Ct. at 1431); *see also State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) (“The list of factors as set out in *Van Arsdall* is not exhaustive.”).

It is important to note that the Court in *Gracely* remanded. However, *Gracely* dealt specifically with an accused being denied the opportunity to develop evidence that a coconspirator, turned witness, avoided a mandatory minimum sentence. *Gracely*, at 374-75, 731

CONCLUSION

When the circumstances of the trial are taken as a whole it is clear that any error in permitting only limited impeachment was harmless and did not prejudice the outcome of the trial. For this reason, it is respectfully submitted that the appeal be dismissed.

Respectfully submitted,


ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SAMUEL M. BAILEY
Assistant Attorney General
S.C. Bar No. 103131

By: 
Samuel M. Bailey

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

April 16, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Allendale County

The Honorable Perry M. Buckner, Circuit Court Judge

RECEIVED
APR 16 2018
SC Court of Appeals

THE STATE,

Respondent,

v.

JAYCOBY TERREAK WILLIAMS,

Appellant.

Appellate Case No. 2017-000872

CERTIFICATE OF SERVICE

I, Samuel Bailey, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Petitioner by depositing two (2) copies of the same in the InterAgency Mail to his attorney of record, David Alexander, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

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

This 16th day of April, 2018.



SAMUEL BAILEY
Assistant Attorney General



ALAN WILSON
ATTORNEY GENERAL

April 16, 2018

RECEIVED
APR 16 2018
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Jaycoby Terreak Williams
Appellate Case No. 2017-000872

Dear Ms. Kitchings:

Enclosed please find the Initial Brief of Respondent and Designation of Matter in the above-referenced matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Samuel Bailey
Assistant Attorney General

/lbb
Enclosures

cc: David Alexander, Esquire
Isaac McDuffie Stone, III, Solicitor
Trisha Allen, Victim Advocacy Division