STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions
The Honorable R. Keith Kelly, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2017-000798

THE STATE,

Respondent,

v.

ATRAUS DORRELL STYLES,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I.

Whether the trial court abused its discretion by denying Appellant's motion for a mistrial where the prosecutor did not suggest the jury draw a negative inference from Appellant's decision not to testify.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249 (Ct. App. 2006). "Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Culbreath, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (Ct. App. 2008). Wide discretion is allowed the presiding judge in dealing with the range and propriety of argument of counsel, and ordinarily his rulings on such matters will not be disturbed. State v. White, 246 S.C. 502, 505, 144 S.E.2d 481, 482 (1965).

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Appellant for common law Misconduct in Office and Assault and Battery Third Degree. Appellant proceeded to jury trial before the Honorable R. Keith Kelly on November 28, 2016. Appellant was acquitted of assault and battery but convicted of misconduct and sentenced to two years' imprisonment. This appeal follows.

STATEMENT OF FACTS

Appellant was a guard at the Spartanburg County Jail. Tr. 140; 145. On August 24, 2014, Appellant was on duty in pod five, the section of the jail housing problematic inmates. Tr. 142. That morning, Appellant became involved in a verbal disagreement with an inmate named Courtney Pauling. Tr. 146-47. At lunch that day, Pauling attempted to throw urine or another "fluid" at Appellant. Tr. 335-36. Appellant reported the incident to his supervisor, telling him if Pauling threw urine on him he would "knock the shit out of him." Tr. 248; 258. The supervisor instructed Appellant not to interact with Pauling after that point. Tr. 221; 248-49. Despite these instructions, Appellant participated in that evening's head count in pod five. Tr. 148. During the head count, three guards inspected the cells as a group. Tr. 145. As usual, one guard was responsible for opening the cell doors and inspecting the cells, another guard was responsible for filming the inspection, while the third guard (who was reporting for the next shift) was responsible for documenting the presence of the inmates. Tr. 148-49. Despite being instructed to stay away from Pauling, Appellant volunteered to serve as the guard to open and enter the cells. Tr. 149-50. During head count, inmates should stand beside their beds while the guards perform their check. However, Pauling disobeyed this rule and stood by the cell door. Tr. 151. When Appellant opened the door, Inmate Pauling walked out of the cell towards Appellant. Tr. 150-51. Appellant dropped the keys to the cell and punched Pauling in his face. Tr. 152. Other jail employees, including the jail's daily operations supervisor and training officer, testified Appellant violated policy by opening the cell door without first instructing Pauling to step back to his bunk. Tr. 220; 278-79; 311-12. Appellant also violated policy by throwing his keys on the floor and by striking Pauling in the face with a closed fist. Tr. 220; 252; 282; 309-10. The jail terminated Appellant for using improper force. Tr. 283.

In addition to eyewitness testimony, the State presented two videos of the incident. State's Exhibit #1 and #2. Jurors saw the recording taken by the other guard during head count as well as video from a surveillance camera. The videos clearly show the incident, which enabled each juror to judge for themselves whether Appellant acted in self-defense. The prosecutor highlighted this fact in her closing argument:

> Ladies and gentlemen of the jury, you don't have to take my word for what happened in this case. You don't have to take the defendant's word for it. You don't have to take Pauling's word for it. You don't have to take anybody's word for it. Why don't you have to take anybody's word for it? Because through technology you can see what happened. The video speaks for itself.

Tr. 413.

Defense counsel objected and later moved for a mistrial on the ground that "there was a comment upon the defendant's right to silence." Tr. 437. The Court denied the motion, finding the prosecutor's argument was not a comment on Appellant's failure to testify. Tr. 438. The Court further noted that in anticipation of defense counsel's motion, it had emphasized in its jury charge that the State carried the burden of proof throughout the trial, and instructed the jury that it was not to consider Appellant's failure to testify against him in any way. Tr. 439.

ARGUMENT

The trial court did not abuse its discretion by denying Appellant's motion for a mistrial because the prosecutor did not suggest the jury draw a negative inference from Appellant's decision not to testify.

The prosecutor's argument, taken in context, was not a comment on Appellant's failure to testify. Instead, the argument simply emphasized the probative value of the videos. The trial court properly denied Appellant's motion for mistrial.

Trial counsel based his motion for mistrial on the assertion that the prosecutor's comments violated Appellant's "right to silence." Tr. 437. The trial court understood the objection to be based on a comment on Appellant's failure to testify, and ruled accordingly. Tr. 348. Defense counsel did not dispute the court's understanding of his objection. On appeal, Appellant claims the prosecutor "impermissibly commented on appellant's failure to testify, and on his exercise of his right to remain silent." Brief of Appellant, p. 4. In response to this argument, the State must first note that the Fifth Amendment guarantees an individual's right not to incriminate himself, but it does not establish an unqualified "right to remain silent." Salinas v. Texas, 570 U.S. 178, 189 (2013). Improper comments on a defendant's failure to testify at trial violate the Constitution's right against self-incrimination. Griffin v. California, 380 U.S. 609, 613-14 (1965); U.S. Const. amend. V ("no person shall be [...] compelled in any criminal case to be a witness against himself"). It is the State's understanding that Appellant's assignment of error is based in the Fifth Amendment right against self-incrimination arising from his failure to testify, not from other instances of post-incident silence that might implicate the due process clause as in cases like Doyle v. Ohio, 426 U.S. 610 (1976) (due process prohibits comments on post-*Miranda* silence). Any other arguments based on pretrial instances of Appellant asserting his "right to silence" are not preserved for review because they were not ruled upon by the trial

court. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) ("An argument not raised and ruled on by the trial court is not preserved for appeal.").

It is impermissible for the prosecution to comment, directly or indirectly, upon the defendant's failure to testify at trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997) (citing Griffin v. California, 380 U.S. 609 (1965)). The rule is meant to safeguard the principle that an accused shall not suffer an "inference of guilt for failure to testify." See Griffin, 380 U.S. at 613. In Griffin, the United States Supreme Court found Griffin's right against self-incrimination was violated because the prosecutor repeatedly emphasized the fact that Griffin had "not seen fit to take the stand and deny or explain" the allegations against him, even though "if anybody would know, this defendant would know." Griffin, 380 U.S. at 611. These comments exemplify the types that are disallowed: those that carry a "clear implication [...] that the defendant has failed to explain the circumstances of the crime." Johnson, 325 S.C. at 187. See also State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275 (2000) (solicitor "repeatedly emphasized the fact that appellant had not shown remorse and had not testified"); State v. Robinson, 238 S.C. 140, 152, 119 S.E.2d 671, 677 (1961) (solicitor improperly commented that state's evidence was "not disputed or denied").

Alleged improper comments must be viewed in context. See Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). Appellate courts should be "careful and critical" in finding allegedly improper statements of counsel to be reversible error, and "[e]very case must necessarily depend upon its own particular circumstances." State v. Gilstrap, 205 S.C. 412, 415, 32 S.E.2d 163, 164 (1944). As stated in Donnelly v. DeChristoforo, 416 U.S. 637, 646-47 (1974):

> [The prosecution's] arguments, like all closing arguments of counsel, are seldom carefully constructed *in toto* before the event; improvisation frequently results in

> syntax left imperfect and meaning less than crystal clear. While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.

Additionally, Appellant must show prejudice from the comment. "[E]ven improper comments on a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant. The defendant must show the improper comment deprived him of a fair trial. Additionally, a curative instruction emphasizing the jury cannot consider the defendant's failure to testify will cure any potential error." State v. Hill, 382 S.C. 360, 369, 675 S.E.2d 764, 769 (Ct. App. 2009) (internal citations and quotations omitted).

The prosecutor's comments in this case did not refer to Appellant's decision not to testify. The most sensible interpretation is that they referred to statements Appellant made to his supervisors explaining his side of the story. See Tr. 246, line 24- Tr. 247, line 2 ("Deputy Styles[...] told me he was having a problem with an inmate"); Tr. 252, line 17- 253, line 11 ("Deputy Styles said he thought everything was good, everything was fine between him and Mr. Pauling."); Tr. 258, lines 19-25 ("Deputy Styles said that if Inmate Pauling was gonna throw urine on him that he would knock the shit out of him."); Tr. 275, line 21- 276, line 4 (Appellant gave his version of events to director of jail operations after incident). Given the numerous statements Appellant made regarding the incident, the prosecutor's remarks cannot be fairly interpreted as a comment on Appellant's silence. Furthermore, the true question on appeal is whether the prosecutor's comments encouraged the jury to draw a negative inference from Appellant's decision not to testify. They did not. They simply emphasized the probative value of the videos. The prosecutor's point was that the existence of the videos meant the case was not a swearing match between witnesses. She was telling the jury they could disregard all of the

statements, from all of the witnesses, and still find Appellant guilty because the videos made the eyewitness accounts superfluous. Her comments were "simply a statement of the evidence which was before the jury." Johnson, 325 S.C. at 187. This was proper argument.

Because the prosecutor's argument was appropriate, the court did not err by denying Appellant's motion for a mistrial. The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way. State v. Stanley, 365 S.C. 24, 33-34, 615 S.E.2d 455, 460 (Ct. App. 2005). The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court. Id. A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice. Id. Those circumstances are not present here. The court took an appropriate precautionary measure when it emphasized during its jury charge that the State carried the burden of proof and the jury should not draw any negative inferences from Appellant's failure to testify. The trial court correctly found the prosecutor's comments did not warrant the extreme measure of a mistrial. The court's decision was a reasoned exercise of judicial discretion. Appellant's conviction should be affirmed.

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Appellate Case No. 2017-000798

THE STATE,

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ATRAUS DORRELL STYLES,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by delivering two copies to Robert M. Dudek, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 29th day of June, 2018.

Anne Mueller

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CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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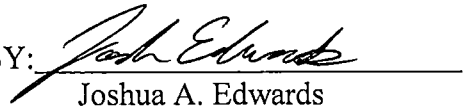
BY: 
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June 29, 2018

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RE: State v. Atraus Dorrell Styles
Appellate Case No. **2017-000798**

Dear Mr. Dudek:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/aam
Enclosures

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