STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2014-002125

THE STATE,

Respondent,

v.

DEMETRICE R. JAMES,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not abuse his discretion in refusing to declare a mistrial where the trial judge followed the procedure outlined in State v. Aldret and correctly determined that there was no manifest necessity to warrant the declaration of a mistrial.

II.

The trial judge did not abuse his discretion in allowing the State to call Investigator James Boland as a rebuttal witness where Appellant's testimony contained multiple irregularities pertaining to statements made to police that necessitated the calling of a rebuttal witness.

STATEMENT OF THE CASE

Demetrice James was indicted at the February 2013 term of the grand jury for Richland County for two counts of attempted murder, burglary in the first degree, attempted armed robbery, and murder. James proceeded to a trial by jury from September 29-October 3, 2014, in Columbia, South Carolina. At the conclusion of trial, James was found guilty of two counts of attempted murder, burglary in the first degree, and attempted armed robbery. He was sentenced by the Honorable John C. Hayes, III to imprisonment for a term of thirty years on each count of attempted murder, thirty years for burglary in the first degree, and twenty years for attempted armed robbery, with all sentences running concurrently. James timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On the evening of January 25, 2013, Trenton Scott was spending some at time at his parent's home with his brother, Troy Scott, Troy's girlfriend Cari Pearson, and friends Joshua Williams and Brandon Jones. ROA. pp. 292-293. Trenton and Troy Scott live with their mother, Sugar Davis, and their step-father, Chandler Davis. ROA. p. 288. The downstairs area of the Davis home contains a salon where Mrs. Davis conducts her business, as well as a music studio and a game room. ROA, p. 290. While the group was hanging out in the studio room, Vincent Nelson came by the home. ROA. p. 294. Nelson previously stayed with the Davis family for a period of time before disappearing. ROA. p. 229. Chandler Davis testified that he and his wife occasionally help out less fortunate children from the neighborhood by giving them a place to stay, clothing, and food. ROA. pp. 228-229. When Nelson showed up to the Davis family home, Trenton Scott had not seen him in three months. ROA. p. 294. Scott testified that Nelson came in around 11:00 PM, which was unusual because they normally do not allow guests to come over at such a late hour. ROA. p. 295.

Trenton Scott noticed Nelson making a series of phone calls. ROA. p. 294. During one of the phone calls, Scott overheard Nelson say that he was in the house. ROA. p. 294. Following the phone calls, Nelson began pressuring Jones to go outside and smoke a cigarette with him. ROA. p. 295. Eventually Nelson, Jones, and Williams proceeded outside to smoke. ROA. p. 296. Once they were outside, an individual walked by and giggled. ROA. p. 200. The individual then turned around and approached Jones, telling him, "Don't move. Get down on the ground if you want to live." ROA. p. 200. Williams slowly put his hands up and looked at his attacker. ROA. p. 200. Williams was

then struck in the head. ROA. p. 200. While Williams was on the ground, he heard Jones begging for his life. ROA. p. 201. Williams stated that there were three individuals that were proceeding down the hill. ROA. 201. Williams heard a scuffle going on between Jones and the assailants. ROA. p. 202. Williams also heard the door to the house open and the sounds of glass breaking inside. ROA. p. 202. Williams remained on the ground and pretended that he was dead. ROA. p. 203. Williams then heard doors slamming and someone shouted, "Six hundred, don't do it. Don't do it." ROA. p. 203. Following the exclamation, a gun went off a number of times and Williams felt a jolt of pain hit his side. ROA. p. 203. Williams noticed he had been shot in his side. ROA. p. 204. Williams testified that after the gunshots he didn't hear Jones anymore. ROA. p. 203. Williams rushed to the upstairs of the Davis home to seek help. ROA. p. 204. Mr. Davis rushed downstairs and found Jones bleeding by the back door. ROA. p. 232. Davis testified that Jones had been shot and there was a lot of blood. ROA. p. 233. Cinnamon Wright, one of the paramedics who responded to the scene, testified that Jones suffered five gunshot wounds. ROA. pp. 373-374. Jones subsequently died at the hospital of his injuries. ROA. p. 436.

While Williams, Jones, and Nelson stepped outside to smoke, Trenton Scott ran upstairs to pick up some hangers. ROA. p. 297. When he arrived downstairs, Maurice Roberts entered the room with a gun pointed forward. ROA. p. 298. Scott testified that the gun was pointed at his head. ROA. p. 298. Roberts pistol-whipped Scott, who then hit Roberts in the face, causing him to fall onto a glass table. ROA. p. 299. During the struggle, Roberts dropped his gun on the floor. ROA. p. 299. Scott and Roberts began fighting to get to the gun on the floor. ROA. p. 299. While they were fighting for the gun,

Appellant walked in. ROA. p. 299. Scott did not know who Appellant was at the time, however the room was well lit and he was able to get a clear look at both intruder's faces. ROA. pp. 299-300. Upon hearing the commotion downstairs, Troy Scott rushed into the room to aid his brother. ROA. p. 381.

Eventually, Roberts was able to outmaneuver Trenton Scott and pick up the gun. ROA. p. 300. Roberts then passed the gun to Appellant. ROA. p. 375. Roberts subsequently tried to make further progress into the house. ROA. p. 301. Scott was able to slam Roberts to the floor. ROA. p. 301. Appellant was standing in the door way with the gun, warning "I'm about to shoot. I'm about to shoot." ROA. P. 301. Trenton and Troy Scott were eventually able to overpower their assailants and force them to retreat towards the back door. ROA. p. 304. As they were fleeing, Trenton Scott attempted to grab Appellant by the dreadlocks. ROA. p. 304. Appellant then fired a shot. ROA. p. 304. The bullet struck Trenton Scott in his left arm. ROA. p. 307.

While he was at the hospital, police showed Trenton Scott a photo line-up where he identified Vincent Nelson. ROA. p. 313. Police later came to the Davis home and showed Trenton Scott another photo-lineup. ROA. p. 315. In this lineup, Scott identified Maurice Roberts. ROA. p. 316. Trenton Scott was later shown another photo line-up where he identified Appellant as the second intruder in the home and the man who shot him. ROA. p. 319. Police also showed a photo line-up to Troy Scott, who identified Appellant as the man who shot his brother. ROA. pp. 392-393.

Vincent Nelson testified at trial. ROA. pp. 330-371. Nelson previously pled guilty to burglary in the first degree, two counts of attempted murder, and voluntary manslaughter. ROA. p. 330. Nelson was in a rap group called "600" with Deshawn

McClary, Maurice Roberts, Jwaun Duckett, and Appellant. ROA. p. 332. On the night of the incident, Nelson, Appellant, Roberts, McClary, and Duckett were spending time together at Roberts' home. ROA. p. 333. Nelson began telling the group about the recording studio at the Davis home. ROA. p. 334. Upon hearing about the studio equipment, Appellant, Nelson, McClary, and Roberts decided to go over to the Davis home and steal the studio equipment. ROA. p. 334. Roberts invited Duckett to join in the robbery, however Duckett declined.[1] ROA. p. 274. The group decided to use Nelson to get into the house because he knew the Davis family. ROA. p. 335. Once he was inside the house, Nelson texted the others. ROA. p. 337. After obtaining a cigarette from Jones, Nelson walked outside with Jones and Williams to smoke. ROA. p. 338. Once they were outside, Roberts came outside with his gun pointed forward. ROA. p. 339. Roberts then hit Jones in the nose with the gun. ROA. p. 340. Once Jones fell to the ground, McClary stood over him. ROA. p. 340. Appellant and Roberts then disappeared into the house. ROA. p. 340-341.Nelson then heard a gunshot from inside the home and began running back to Roberts' house. ROA. p. 341.

On January 28, police officers came and spoke to Nelson about the incident. ROA. p. 344. Nelson waived his rights and told police what happened. ROA. p. 345. Nelson was shown photo line-ups. ROA. p. 345. In one of the line-ups, Nelson identified Appellant. ROA. p. 353. Nelson also informed investigators everyone else involved in the attempted robbery was wearing latex gloves. ROA. p. 353.

[1] At trial, Duckett testified that he was in a rap group named "600 squad" with Appellant, Roberts, McClary, and Nelson.ROA. p. 248. Duckett was at the Roberts home with Nelson and Roberts the Sunday after the robbery. ROA. p. 257. When police arrived, Roberts threw Duckett his phone and told him to flush it. ROA. p. 260. Instead of flushing the phone, Duckett threw it in the bathroom. ROA. p. 260. Police subsequently found Duckett hiding in a closet. ROA. p. 290. Duckett told police that he was not at the scene of the attempted robbery, but he knew who did it. ROA. p. 263. Duckett knew about a phone call where Roberts, Appellant, Nelson, and McClary agreed to rob a studio. ROA. p. 263. Duckett submitted that he was invited to participate in the robbery, however he told Roberts "I don't do licks." ROA. p. 274.

ARGUMENT

I.

The trial judge did not abuse his discretion in refusing to declare a mistrial where the judge followed the procedure outlined in State v. Aldret and correctly determined that there was no manifest necessity to warrant the declaration of a mistrial.

Relevant Facts

At the beginning of trial on October 2, 2014, the Court stated:

> We had it brought to my attention that there's been some possible discussion, maybe not of the case itself, but at least of a witness and I'm not really sure because I haven't - - I wasn't really privy to it, but Mr. Tolbert, the bailiff, and Mr. Truitt, the court coordinator – I guess that's his official title – both overheard some conversations through the door. Mr. Tolbert heard them and alerted Mr. Truitt that there was some discussion regarding, if not the case, at least a witness.

ROA. p. 395. The trial judge noted he had looked at State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999) and decided to call Tolbert and Truitt to testify as to what they heard. The trial judge stated he would then call in the jurors one at a time and ask them whether they could still be fair and impartial. Prior to the hearing, Defense Counsel moved for a mistrial, asserting her client's right to a fair trial and due process rights had been violated. ROA. p. 397-398. The trial judge ruled, "I don't believe at this time that there's a manifest necessity to grant a mistrial, but I will take it under consideration. And don't let me forget to address it after and let you renew it after we've queried the jury." ROA. p. 399. Mr. Tolbert explained to the court that he overheard the jury discussing the two prisoners who came in during trial. ROA. p. 400. Truitt told the Court that he did not hear anything specifically, it just sounded like the jury was discussing the case. ROA. p. 401.

Following Tolbert and Truitt's recollection of what they heard, the judge called the foreman of the jury forward. ROA. p. 401. The foreman testified the jury was discussing the testimony they heard so far. ROA. p. 402. The Court stated:

> I told you at the beginning of the case that you were not to discuss the case among yourselves or make up your own mind until we reached a point in the trial where I instructed you to jointly deliberate and return a unanimous verdict. With that being said, having this discussion, could you still, you yourself – I'll ask all the other jurors this – still - - would this prior discussion affect your ability to be fair and impartial to Mr. James in regard to your ultimate deliberation?

ROA. p. 402. The foreman replied that he could be impartial. The Court then asked:

> Okay. And would you still be able to base your decision solely on the law and the evidence that you receive at the end of the trial, that is, on all the facts from all the witnesses and the law as I give it to you at that time?

ROA. p. 402. The foreman replied, "yes, sir." ROA. p. 403. The Court then stated:

> And do you understand - - again, you're the liaison. Go ahead and instruct the jurors that I - - there should be no further discussions, but I will - - I'm going to call all of them in and ask them the same type things. And - - but go ahead and tell them to stop if they're doing it now.

ROA. p. 403. The foreman replied, "Okay. Yes, sir." ROA. p. 403. Finally, the Court asked:

> So the bottom line is: Do you, in spite of the prior discussions, think you could disabuse your mind of that and base your - - and still be fair and impartial and not be prejudiced by the discussions to date?

ROA. p. 403. The foreman replied. "Yes, sir." ROA. p. 403.

Defense Counsel then asked the Court to query each juror as to what specifically they were discussing. ROA. p. 403. The Court responded "If they've been discussing it, we can assume they've discussed a little bit of all of it, and from my perspective I'm treating it as though they've been discussing everything. So - - and I think if we bring them in and ask each one what they've been discussing, we'll be here 'til midnight

tonight." The Court then asked the remaining jurors the same questions he asked the foreman. ROA. pp. 404-416. All of the jurors responded they would be able to be fair and impartial to Appellant, the discussion thus far had not prejudiced them in any way against Appellant, and that they would still be able to deliver a fair and impartial verdict in the case. ROA. pp. 404-416.

When asked whether the State had any comments, the Solicitor stated they would defer to the jurors. ROA. p. 416. When further asked by the Court whether the State took any position on the matter, the Solicitor stated the State took no position on the matter. ROA. p. 416. The Defense then renewed its motion for a mistrial. ROA. p. 417. The trial judge ruled:

> I deny the motion. I find that there's not any manifest necessity. I don't believe - - the case law, the Aldret case says it is up to the party alleging the premature deliberation to establish prejudice. We're not alleging premature deliberation; we know there was premature deliberation. But I think the prejudice factor is still one that the Court must consider and the courts have set forth the procedure and - - to voir dire the jurors, as I have, and it says, "If practicable, tailor a cautionary instruction to correct the ascertained damage." . . . This jury was fair and impartial, vetted when we started the trial. They did fall off the precipice to some degree in not following my instructions, but they have all indicated to me that that would not - - that that transgression would not affect their ability to be fair and impartial nor would it prejudice them against Mr. James. So I deny the motion.

ROA. p. 418. Following his ruling, the trial judge instructed the jury:

> Members of the jury panel, I'm just going to remind you what I've told each of you individually and I told you at the first of trial: That there will be no further discussions of the case until I instruct you to jointly deliberate and return a unanimous verdict. And I instruct you now to disabuse your mind of all the discussions you've had to this point. I can't say we're starting on a new slate because we've got testimony in the record, but as far as your discussions, that's a new slate. So you're not to discuss the case further and you're to just disabuse your mind of any discussions that you've already had and not let that come into your deliberations in any way whatsoever. I also instructed you not to discuss

> the case with anyone outside the courtroom. Don't see if there's any news coverage or use any devices to receive information about the trial. Has anybody had any problem with that? That is, has anybody discussed the case outside the courtroom with anyone, accessed any information regarding the case through any electronic devices or has anyone – I don't know that there was any news coverage – been exposed to any news coverage? If so, I need you to raise your hand. No one raises their hand.

ROA. pp. 423-424.

Discussion

Appellant asserts the trial judge erred by refusing to declare a mistrial when informed the jury was prematurely discussing the case. The State submits that this argument is without merit, as the trial judge fully complied with the procedure outlined in Aldret, and conducted a hearing where he determined whether premature deliberations occurred, conducted voir dire of the jurors to determine whether there had been any prejudice and whether they could still be impartial, and tailored a cautionary instruction to correct any potential damage. The trial judge, thus, correctly determined that there was no manifest necessity to warrant the declaration of a mistrial.

"The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors." State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000). In order to safeguard a defendant's right to a fair trial by an impartial jury, the jury must reach its verdict free from any outside or improper influence. State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). However, "unless [juror] misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." Id.; see also Aldret, 333 S.C. at 313, 509 S.E.2d at 813-814 (instructing juror misconduct in the form of premature deliberations does not

warrant automatic reversal and, instead, requires the defendant to demonstrate such misconduct affected the jury's verdict before a reversal is granted).

When an allegation of juror misconduct arises, the trial judge is vested with broad discretion to assess and respond to such an allegation. State v. Pittman, 373 S.C. 527, 553, 647 S.E.2d 144, 157 (2007). Juror misconduct is a fact to be determined by the trial judge under the circumstances of each individual case. State v. Smith, 338 S.C. 66, 71, 525 S.E.2d 263, 266 (Ct. App. 1999). Decisions regarding how to address juror misconduct rest in the sound discretion of the trial judge, and the trial judge's decisions on such matters will not be reversed absent an abuse of that discretion amounting to an error of law. Pittman, 373 S.C. at 553, 647 S.E.2d at 157.

Premature deliberations are a form of juror misconduct because "[a] jury should not begin discussing the case, nor deciding the issues, until all the evidence has been introduced, the arguments of counsel complete, and the applicable law charged." State v. Joyner, 289 S.C. 436, 437, 346 S.E.2d 711, 712 (1986). The prohibition against premature deliberations is designed to prevent jurors from making up their minds prematurely by declaring a position on an issue while the trial is in progress and then standing by that declared position even in defiance of contrary evidence subsequently introduced. State v. McGuire, 272 S.C. 547, 552, 253 S.E.2d 103, 105 (1979).

In State v. Aldret, the South Carolina Supreme Court determined premature deliberations were a type of juror misconduct that could affect the fundamental fairness of a trial. 333 S.C. at 312, 509 S.E.2d at 813. In order to assist the trial courts of South Carolina in responding to such misconduct, the Supreme Court proposed a "suggested procedure" to handle allegations of premature of deliberations. Id. at 315, 509 S.E.2d at

815. Pursuant to the suggested procedure, the Supreme Court advised trial judges to conduct a hearing if allegations of premature deliberations arose during trial to first determine if the premature deliberations actually occurred and to then determine if they were prejudicial. Id. Significantly, the Supreme Court instructed that a trial judge "**may**" question the jurors and issue a cautionary instruction where practicable to respond to allegations of premature deliberations "[i]f requested by the moving party[.]" Id. (emphasis added). Thereafter, the Supreme Court instructed that a trial judge should only grant a new trial in cases where the premature deliberations were prejudicial. Id.

In Appellant's case, the trial judge carefully followed the procedure outlined by the South Carolina Supreme Court in Aldret. The trial judge questioned Tolbert and Truitt as to what they overheard jurors discussing. The trial judge also called the foreman of the jury, who informed him that the jurors had been discussing the testimony they heard thus far. The trial judge then questioned each juror as to whether their discussions had prejudiced them in any way against Appellant and whether they would be able to be fair and impartial to Appellant. Finally, the trial judge issued a cautionary instruction where he instructed the jurors to disabuse their minds of the previous discussions and to not discuss the case any further until told to begin deliberations. While the judge declined to question the jurors further as to what specifics were discussed, the trial judge was under no requirement to do so, as the decision on whether to question jurors is completely discretionary. The trial judge stated that he was treating the situation as if the jury had discussed everything in the case thus far and took appropriate action to determine whether there was any prejudice.

Based on the trial judge's discussions with the bailiffs and the jurors, the trial judge appropriately concluded that the juror's discussions were not prejudicial. Each juror testified that they had not been prejudiced by the discussions and they would be able to be fair and impartial in reaching their verdict. Appellant failed to establish he suffered any prejudice as a result of the jury prematurely discussing the case. See State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("We have consistently required defendants to demonstrate prejudice due to improper jury influences.").

Without any showing of prejudice, there was no manifest necessity to warrant the declaration of a mistrial. "The decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (citation and quotation marks omitted). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005). "The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). As found in Aldret, a trial judge should only grant a new trial in cases where the

premature deliberations were prejudicial. 333 S.C. at 315, 509 S.E.2d at 815. Without any showing of prejudice by Appellant, the trial judge did not abuse his discretion in declining to grant a mistrial.

II.

The trial judge did not abuse his discretion in allowing the State to call Investigator James Boland as a rebuttal witness where Appellant's testimony contained multiple irregularities pertaining to statements made to police that necessitated the calling of a rebuttal witness.

Relevant Facts

At trial, Appellant took the stand to testify regarding his version of events. ROA. pp. 528-604. Appellant acknowledged he gave several statements to police. ROA. p. 573. Appellant testified that he initially talked to police freely and voluntarily because he wanted to let them know what they needed to know. ROA. pp. 573-574. Appellant also testified that he told law enforcement that his girlfriend picked him up earlier in the evening on the night of the incident and later dropped him off, but that he did not tell law enforcement he was at his girlfriend's home at the time off the incident. ROA. p. 574. Appellant claimed he later gave a second statement to law enforcement because he wanted to tell them what he knew because he was scared. ROA. p. 575. Appellant was then cross examined regarding the contents of the three statements he made to police. ROA. pp. 579-600.

At the conclusion of the defense's case, the trial judge noted the state would like to call one reply witness. ROA. p. 606. Defense Counsel argued:

> The purpose of a reply witness is to address new information that was brought up during the defense case in chief. Mr. James was cross-examined on the details of that statement, on all of his statements that were given. The State had an opportunity to introduce the statements in their case in chief. They chose not to, which is how they decided to try

> their case, but there - - our issue is there's no new information being elicited that had not already been covered.

ROA. pp. 606-607. The State argued:

> On cross-examination, Mr. James actually denied his initial details and specifically one where he told law enforcement that he was actually at his girlfriend's during the time this incident occurred. And I did not cross extensively through each statement, as there were multiple ones, to include the written statements, specifically the third statement. I think, based on his testimony now, we need the law enforcement as a witness, and it is our burden of proof and especially the route that, you know - - we bear the burden of proof in this case, and we deem this essential to proving our case because what's been elicited, too, is that he just was cooperative with law enforcement. He gave these statements just essentially supplementing one another and that's how it came about when, in fact, he only gave these statements after being confronted with more information, confronted with more information, and his versions change.

ROA. pp. 760-761.

The trial judge inquired as to what information was new. ROA. p. 609. The State noted "[T]he new information here is really how the versions of the statements came about because based on his testimony, he was just cooperating with law enforcement and I just want to tell the truth or half the truth, and he did deny making certain statements to law enforcement." ROA. p. 609. The trial judge then asked the Solicitor whether there were certain denials controverted by the evidence, to which the Solicitor responded, "yes." The trial judge then ruled that he would admit the evidence. ROA. p. 610.

The State subsequently re-called Investigator James Boland to the stand. Investigator Boland was the lead investigator in the case. ROA. p. 487. Investigator Boland testified that Appellant initially told investigators that he had no knowledge of the crime whatsoever. ROA. p. 615. After a period of time, Appellant indicated he heard about the crime "on the street," but he was with his girlfriend at the time. ROA. p. 615. Investigator Boland eventually confronted Appellant with the fact that they had already

spoken to Nelson and Roberts and they had implicated him in the crime. ROA. p. 616. Investigators also had obtained testimony from the Victims and photo lineups where they identified Appellant. ROA. p. 616. After Appellant was confronted with this evidence, a new statement evolved. ROA. p. 616. Boland then read Appellant's first statement into the record. ROA. pp. 617-620. Investigators felt that Appellant's statement was not accurate, so they confronted him with additional information. ROA. p. 620. After being presented with the additional information, Appellant came up with another version of what happened. ROA. p. 620. Investigator Boland then read Appellant's second statement into the record. ROA. pp. 621-625. Following the second statement, Appellant provided a supplementary statement. ROA. p. 625. Investigator Boland then read the supplemental statement into the record. ROA. pp. 625-626. Appellant stated that in the supplemental statement, he was following up with respect to Roberts' actions. ROA. p. 626.

Discussion

Appellant contends the trial judge erred in allowing the State to call Investigator Boland as a rebuttal witness. Specifically, Appellant asserts that no new evidence was revealed during Appellant's testimony and the State was able to thoroughly cross-examine Appellant regarding the statements he gave to police. The State submits this argument is without merit, as the trial judge did not abuse his discretion in allowing the State to call Investigator Boland where Appellant's testimony contained multiple irregularities pertaining to statements made to police that necessitated the calling of a rebuttal witness.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Pursuant to the trial judge's discretion regarding the manner in which a criminal trial is conducted, a trial judge has the discretion to control the time at which the testimony will be introduced, to reopen the evidentiary record, and to allow additional evidence or testimony to be presented. State v. Humphery, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981); see State v. Clyburn, 16 S.C. 375, 378 (1882) ("The conduct of a case in the Circuit Court, so far as relates to the time when testimony may be introduced, must be left to the discretion of the Circuit judge, to be governed by the particular circumstances of each case."). Critically, "[a] trial is a search for the truth; concomitantly, liberality is the linchpin of the rule." State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996).

Likewise, decisions as to whether to admit or exclude evidence are generally left to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). As a result, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d

87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.").

"When a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. McEachern, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012). In the current case, Appellant testified regarding a number of statements he made to police. The testimony that was elicited from Appellant painted an incorrect picture that he had been cooperative with law enforcement and "wanted to let them know what they needed to know" and "wanted to tell them what he knew because he was scared," while the reality is that he made those statements after being confronted by the overwhelming amount of condemning evidence against him. Furthermore, Appellant testified he had not told investigators that he was with his girlfriend the night of the robbery, which is controverted by one of his statements to Investigator Boland. The introduction of this evidence during the defense's case-in-chief warranted the State's calling of Investigator Boland as a rebuttal witness to rebut Appellant's claims. Furthermore, Investigator Boland's testimony provided clarity as to the substance and context of all of Appellant's statements. The trial judge, thus, did not abuse his broad discretion in allowing

Investigator Boland's reply testimony.

Moreover, even if the trial judge somehow erred in allowing the State to call Investigator Boland as a rebuttal witness, any error would be harmless. Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (citations and internal quotations are omitted)." The alleged error in this case did not contribute to the jury's verdict whatsoever, as the jury was presented with overwhelming evidence of Appellant's guilt. Appellant was directly implicated in the crime by Vincent Nelson and Jwaun Duckett. Furthermore, both Trenton Scott and Troy Scott identified Appellant as the second man who entered their home and subsequently shot Trenton Scott.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
John C. Hayes, III, Circuit Court Judge

THE STATE, Respondent

vs.

DEMETRICE R. JAMES

Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Tiffany L. Butler, Esquire, Appellate Defender, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.

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

This 1ST day of March, 2016.

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