

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

STEVEN RICHARD LEWIS,

APPELLANT.

APPELLATE CASE NO. 2017-001234

PRO-SE BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the court erred by allowing potential jurors to announce, in open court their experiences with violent crime, prior to their service, on a jury in a trial with like crimes.

II. Due to several instances of prosecutorial misconduct, Appellant requests this Court to reverse the judgment, "On The Law", on the basis of several legal errors that deem Appellant's trial unfair using improper influence on the jury.

III. Appellant was denied his right of confrontation of witnesses under the Sixth and Fourteenth Amendments.

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offenses of murder, attempted murder, armed robbery, burglary first, and kidnapping. R. 413-422. His case was called to trial on May, 22, 2017, before the Honorable J. Derham Cole, and a jury. Matthew William Shealy represented appellant. Derrick Balsa and Nicholas Sharpe were the assistant solicitors. R. 1.

On May 24, 2017, appellant was found guilty on all counts. R. 405, 1.5 - 406, 1.1. Judge Cole sentenced appellant to life imprisonment for murder, life imprisonment for burglary first, thirty years on both armed robbery and attempted murder, consecutive.

This appeal follows.

This pro-se brief of Appellant is in opposition to the Anders type brief submitted by Robert M. Dudek, Chief Appellate Defender. Appellant claims meritorious issues exist and wishes to supplement the record for review and preserve the issues for federal review.

ARGUMENT I.

I. Whether the court erred by allowing potential jurors to announce in open court their experiences with violent crime prior to their service on a jury in a trial with like crimes.

As stated above, the Appellant began the jury trial on May, 22, 2017 for the offences of murder, attempted murder, armed robbery, burglary and kidnapping. During the voir dire process the jurors were asked two questions relating to their experiences with violent crime. The judge stated: I need to know if you or any members of your immediate family have ever been the victim of any type of a violent crime or criminal offense, as well as whether you or any members of your immediate family as I defined it have ever been accused of having committed any type of violent crime or criminal offense. R. page 32 l. 25, 33 ll. 1-5.

Admittedly, these types of questions are not uncommon in the voir dire process prior to a criminal trial involving a violent crime. In response to these two questions eight jurors stood up in front of the jury panel and discussed their experiences with murder, shootings, strong arm robbery, lewd acts on a minor, burglaries, domestic violence, breaking and

and entering and home invasions. R. pages 33-37. The transcript provides evidence that this was most likely true as bench conferences are noted when they occurred.

The court abused its discretion and should have required this information to be shared with the parties privately through bench conferences as not to emphasize the pervasiveness of murder and violent crime in the community. The Appellant argues that this undue emphasis on violent crime in the community likely prejudiced the entire jury panel when they were exposed to this information immediately prior to their service on a jury in a trial regarding related issues.

Although the initial concern is trial counsel's failure to address this potential legal error unpreserved for Appellate review should be reviewed "in the interest of justice" due to the nature of the error is so unfair that it may have affected the Appellant's conviction. Therefore, this Appellant respectfully requests the Appellate Division court to grant leave to review and consider this issue concerning the potential impact this information had on the jury panel in deliberations and the probable prejudice at stake for the Appellant. Please deny Appellate counsel's request to be relieved on this issue.

II. Due to several instances of prosecutorial misconduct, Appellant requests this Court to reverse the judgment. "On The Law", on the basis of several legal errors that deem Appellant's trial unfair using improper influence on the jury.

During the trial the state called Robert Charles Talanges as an I.D. officer who processed the crime scene. R.114, 11.14-16. The solicitor began with leading questions leaving the witness to say either "yes" or "correct" all the way to where States Exhibit No. 46 was moved into evidence. R.129, 1.17.

The Court ordered to lay the foundation and Mr. Talanges replied "Briefcase that was located inside the residence". R.129, 1.24. The briefcase had a fingerprint labeled A that was processed and yielded a result. R.130, 11.12-15.

Upon thorough cross-examination of all the evidence that was not tested the fingerprint issue returns for identification purposes. R.150, 11.1-4. Upon review of Officer Talanges testimony regarding any tangible evidence probative to any charges at issue in trial, this testimony did not make the existence of any fact more probable than it would be

without the evidence. S.C.R.E. 401. To the extent the State can argue that it was probative in some way, the potential prejudicial effect highly outweighs any possible probative value as it easily creates unfair prejudice, confuses the jury on the issues and misleads them. S.C.R.E. 403.

Next witness simply testified that he assisted Officer Talanges in processing the scene for latent fingerprints. R.158, 11. 23-25. Steven Horton's testimony provided nothing probative to this case at all and did not make the existence of any fact more probable. S.C.R.E 401.

Courtney Burgess, latent print examiner was qualified as an expert in the analysis of fingerprints. R. 163, 11.20-23. Upon reviewing the entire process Ms. Burgess identified the Appellant's fingerprint on the briefcase labeled lift A. R. 166, 11.1-3. Throughout this entire process to identify a single fingerprint on a briefcase without any idea when or where the print was left on it and how it makes any fact's existence more or less probable than without its existence is clearly irrelevant to this case S.C.R.E, 401.

With no probative value it easily creates unfair prejudice, confuses the issues and misleads the jury. S.C.R.E. 403.

The Solicitor's misconduct shows a pattern of leading questions within the largest majority of the state's witnesses, where the Court finally had to address this egregious behavior and its impact on the jury.

THE COURT: Well, apparently she doesn't remember all that. She's just -- that's the problem with it. She doesn't really have a memory of what was said apparently to those -- to that degree. And that is clearly prejudicial to the defendant. And the probative value is obviously substantially outweighed by the danger of unfair prejudice when she -- you're putting words in her mouth because you know what she said before. But she's saying she can't remember those things. And then this jury is supposed to be able to rely upon that. I think that's clearly inappropriate. R.310 ll. 19-25 - 311, ll. 1-4.

There is evidence on the record that there is **no** adversarial process because trial counsel's objections are absent. Trial Court's acknowledgment of such misconduct is evidence that clearly supports this issue and the fact it was addressed late in this trial outside of the jury's presence cannot possibly turn this into a fair trial.

III. Appellant was denied his right of confrontation of witnesses under the Sixth and Fourteenth Amendments.

- (a). The defense was entitled to attempt to show that Scruggs and Cash was biased because of their status as detainees with pending charges at the time trial began, and limiting the cross-examination of Scruggs and Cash precluded the defense from showing their possible bias.
- (b). The prosecution's use of known false testimony and the concealment of Scruggs and Cash's appearance as detainees denied the jury a basis to infer that the witness' character is such that their credibility is not reliable.
- (c). The prosecution's objection on the relevance of the cross-examiner's intention to introduce testimony that both of the witness' were being detained together in the same pod at the detention center is unfounded due to the fact the jury could easily infer a conspiracy existed.

Appellant asserts defense counsel should have been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness'.

The prosecution was represented by Derrick Bruce Balsa (Balsa) the defense counsel, Matthew William Shealy (Shealy) represented Steven Richard Lewis (Appellant). On May 22, 2017 Appellant went to trial before the Honorable J. Dertam Cole Judge; and a jury.

The state called Casey Scruggs as witness, after being first duly sworn, testified as follows:

Direct Examination by Mr Balsa.

Q. And where do you live?

A. Right now I'm at Parris Bridge Road with my dad.

Q. Parris Bridge Road is your father's address?

A. Yes, sir.

Mr. Balsa had full knowledge that Scruggs was at the time living at the Spartanburg County Detention Center being held on pending charges. Scruggs was allowed to change from her jumpsuit into normal "street" clothes, prior to trial, giving the jury no indication of her current status.

Mr. Shealy began his cross-examination by this:

Q. Okay. You've testified in a trial before in this case, is that correct?

A. Yes, sir.

During the entire cross-examination Mr. Shealy corrected Scroggs testimony due to inconsistencies and lack of her memory:

Q. All right. You said you think that that was a Thursday. Would it surprise you that that was actually a Sunday?

A. No, sir, it wouldn't.

App. 200, ll. 19-22.

Q. All right. Because at the prior trial you had testified that he had taken a Kil-tec 9mm. So now you're saying he didn't do that?

A. Yes, no, sir. I'm sorry. After -- yes, sir. The gun was in the drawer because -- yes, sir.

App. 201, ll. 14-18

Q. Now, let me deal with your relationship with Mr. Cash. You've testified you didn't know him that well.

A. Yes, sir.

Q. Okay. But again, in the last trial you mentioned that you had told him that you wished Carey would be more like him. What does that mean?

A. It wasn't nothing like -- I mean, I just....

App. 209, ll. 17-22.

Q. And did those drugs have any effect on you?

A. No, sir.

Q. They didn't have any effect on you?

A. No.

Q. Then why would you be taking them?

A. I mean, I guess it--- I guess it had effect on me.

App. 212, ll. 17-22.

It was during redirect Balsa asked only leading questions requiring a yes or no answer. On recross.

Shealy proved this witness was not being truthful.

Q. Now, you had testified actually, last trial, that you had-- you were with Nicole when she bought it. Are you saying now that you were not with Nicole when she bought it?

A. I never said I was with Nicole when I bought the gun.

Q. Yes, mam. I believe you did.

Mr. Shealy concluded "Judge, we will just stick with that answer. So I'm done.

App. 221, ll. 2-8

Appellant contends that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on Scruggs testimony which provided a crucial link in the proof of Appellant's act. The accuracy and truthfulness of Scruggs testimony were key elements

in the State's case against Appellant. The claim of bias, ulterior motives and deception which the defense sought to develop was admissible to afford a basis for an inference that credibility and reliability in Scruggs testimony was to be afforded little to no weight.

The state called Bridgette Nicole Cash as witness after being duly sworn, testified as follows:

Direct Examination by Mr. Balsa.

Q. Where do you live?

A. Woodland Avenue.

Mr. Balsa, again, had full knowledge that Cash was at the time living at the Spartanburg County Detention Center being held on pending charges. She too, in her street clothes concealing her current status. Mr. Balsa was leading this witness when the Court dismissed the jury and the following information was brought to light:

Cash could not clearly remember and claimed because she was under the influence when Detective Norris interviewed her. Mr. Balsa was having a difficult time eliciting the testimony due to Cash's memory loss, the Court steps in:

The Court: Well, apparently she doesn't remember all of that. She's just -- that's the problem with it. She doesn't

really have a memory of what was said apparently to those -- to that degree. And that clearly is prejudicial to the defendant. And the probative value is obviously substantially outweighed by the danger of unfair prejudice when she -- you're putting words in her mouth because you know what she said before. But she's saying she can't remember those things. And this jury is supposed to be able to rely upon that. I think that's clearly inappropriate.

Mr. Balsa: And we would like to play her interview as a prior inconsistent statement based on her lack of memory.

Mr. Shealy: Judge, it's not an inconsistent statement if she doesn't remember.

The Court: Well, I understand. That's -- I'm afraid that's going to create a real problem.

App. 310, ll. 19-25 - 311, ll. 1-10.

Cross-Examination by Mr. Shealy reveals the following:

Q. How many times do you think you've met him?

A. Maybe about seven or eight times.

Q. Seven or eight times?

A. I'm not too sure.

Q. Do you remember testifying in a prior trial?

A. Yes, sir.

Q. Do you remember at that trial you said you had only

met him twice?

A. I was kind of under the influence.

Q. You were under the influence when you were testifying--

A. Yes, sir.

Q.-- at that hearing?

A. Yes, sir.

Q. Okay. Were you under the influence on the day that this allegedly happened?

A. Yes, sir.

Q. How long had you been under the influence when this all allegedly happened?

A. The whole time.

Q. The whole time?

A. Yes, sir.

Q. When you say that, you mean for a week, two weeks?

Give me a ballpark figure.

A. Ten years.

App. 319, ll. 22-25 - 320, ll. 1-22

Mr. Shealy attempted to elicit testimony from Ms. Cash, but due to her lack of memory made very little progress.

Then he notified the judge he had a matter he needed to approach on.

The Court dismissed the jury again.

Mr. Shealy question Cash as follows:

Q. All right. Ms. Cash, you are currently housed in pod one, is that correct, at the jail?

A. Yes, sir.

Q. All right. What cell are you in?

A. Ten.

Q. Cell ten. Are you aware Ms. Scruggs is in cell 13?

A. Yes, sir.

Q. Have y'all spoken about this case?

A. No, sir.

Q. Have y'all spoken at all about any of these incidents?

A. No, sir.

App. 329, ll. 15-25-330, l. 1.

Mr. Balsa objected on relevance and the Court sustained.

Appellant asserts although this issue is preserved he would ask this Court to review this issue under the claim of the verdict is against the weight of the evidence and this Court act as the 13th juror.

The Sixth Amendment to the Constitution guarantees the right of the accused in a criminal prosecution "to be confronted with the witness against him." This right is secured for defendants in state as well as federal

criminal proceedings under Pointer v. Texas, 380 U.S. 400 (1965). Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness. See Davis v. Alaska, 415 U.S. 308 (1974).

In this particular case there was no physical evidence connecting Appellant to the crime he was accused. The prosecution relied on Scruggs and Cash's testimony. Mr. Balsa knew his witnesses were currently living at the detention center when he elicited false testimony from them. Traditionally detainees are brought into the courtroom in jumpsuits and shackles when they testify, not in this case. Scruggs and Cash were not on trial, but, for some reason the prosecution was allowed to use deceptional tactics to prevent the jury from properly weighing their testimony. What is even more troubling is Scruggs and Cash were being held

together at the detention center, which, in reality it may have been very possible the jury may infer conspiracy.

The Appellant contends the record shows testimony of Scruggs and Cash unreliable and there exists a real possibility the impeachment evidence the defense was developing had been presented the outcome would be different.

The Court abused its discretion by allowing the prosecution to object relevancy of informing the jurors of the status of the witnesses and thier pending charges. The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of their testimony.

The jury was unable to properly weigh the testimony as it was presented. Appellant was thus denied the right of effective cross-examination which is constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.

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