

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ATRAUS DORRELL STYLES,

APPELLANT

APPELLATE CASE NO. 2017-000798

RECEIVED

FINAL BRIEF OF APPELLANT

AUG 14 2018

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the Court erred by refusing to grant a mistrial where the Assistant Attorney General impermissibly commented on appellant's failure to testify, and on his exercise of his right to remain silent since this was particularly egregious where the inmate testified and gave his extensive version of the fight, was partially corroborated by appellant's former coworkers, and where appellant, the prison guard, exercised his right to silence?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offenses of assault and battery in the third degree, and misconduct in office. R. 377 – 378. Supp. R. 1 – 2. Appellant's case was called on trial on November 28, 2016, before the Honorable R. Keith Kelly, and a jury. Andrew Johnston and Julia Tat represented appellant. Assistant Attorney General Larone Washington and Diana Thornwell represented the State. R. 1.

On December 1, 2016, the jury found appellant not guilty of assault and battery third degree but it found him guilty of misconduct in office. R. 366, ll. 12-25. Judge Kelly sentenced appellant to two years in prison. R. 368, ll. 8-11.

This appeal follows.

STANDARD OF REVIEW

“When a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard but rather a determination that must be made with the specific difficulty facing the trial judge in mind.” State v. Rowlands, 343 S.C. 454, 439 S.E.2d 717 (Ct.App. 2000). “The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law.” State v. Inman, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011).

ARGUMENT

The Court erred by refusing to grant a mistrial where the Assistant Attorney General impermissibly commented on appellant's failure to testify, and on his exercise of his right to remain silent since this was particularly egregious where the inmate testified and gave his extensive version of the fight, was partially corroborated by appellant's former coworkers, and where appellant, the prison guard, exercised his right to silence.

Relevant Facts

There is a videotape of the incident involved in this case that is now before this Court for viewing. While any videotape is subject to different inferences being drawn from it, it strongly appeared that inmate Courtney Pauling came out of his jail cell, and was getting ready to attack appellant when appellant punched him. See State's exhibits one and two on file with this Court.

Judge Kelly denied appellant immunity from prosecution on the grounds that he was not without difficulty in bringing on the problem since he opened the cell door that housed the angry inmate, Courtney Pauling. R. 372 – 376. The State called Pauling as a witness. At the time of the trial Pauling was serving a twenty-five year sentence for armed robbery, kidnapping, and possession of a deadly weapon during a violent crime. R. 21, l. 5 – 22, l. 8. The defense later learned that Pauling had been involved in a murder at McCormick Correctional Institution prior to appellant's trial. R. 370, l. 3 – 371, l. 24.

Pauling told the jury that he and appellant, Officer Styles, had been talking about sports, and "there was a lot of foul play, a lot of verbal disrespectful words being exchanged" for whatever alleged reason. R. 27, l. 23 – 28, l. 24. Pauling said appellant called him "a pussy or a bitch." R. 29, ll. 2-10. Pauling claimed: "I avoided the situation. I was given a verbal command

by Officer Styles at that particular time to go to my room, which I followed those orders and went in my room.” R. 29, ll. 15-20.

Pauling said because he got into an argument with appellant he was not allowed to finish his hour of recreation that day. Pauling maintained that he “was fearful for my life” when he claimed three officers came into his room at the end of the shift for a head count. R. 30, l. 3 – 37, l. 24. The videotape of the incident between inmate Pauling and appellant only shows a one-on-one exchange between Pauling and appellant. R. 37, l. 6 – 38, l. 22.

Pauling did admit he tried to throw urine on appellant before they had their physical exchange. R. 57, ll. 1-22. Pauling claimed appellant told him he was going to get his “ass whooped at count time.”

Pauling repeatedly said he was scared of appellant, and he “feared for his life.” R. 64, l. 10 – 65, l. 8. Pauling acknowledged on cross-examination that he had filed a lawsuit in federal court because of this incident. R. 72, ll. 2-19.

One of the other prison guards, Timothy Knighton, described the incident: “Mr. Pauling stepped out of the cell and started moving toward Deputy Styles. Deputy Styles at that time backed up two steps, I want to say, I’m not sure, dropped the keys and punched Mr. Pauling in the face.” R. 94, l. 18 – 95, l. 1.

Knighton said that appellant dropping the keys to the cells was improper because an inmate could have opened all of the other cells if he got control of the keys. R. 95, l. 2 – 97, l. 1. There were other claims that appellant could have pepper sprayed Pauling but he should not have punched him.

Another prison guard, Daniel Thompson, III, recounted, the incident as follows: “When I looked up the door was open. The inmate was out of the cell. He didn’t really appear aggressive

to me. And Deputy Styles was there. And the next thing they were going at it.” Thompson said the inmate “had his hands down beside his sides,” and he had not made a fist with his hand. All of this was meant to convey that appellant wanted to fight the inmate, and he was the person in the wrong. R. 130, l. 1 – 131, l. 11.

Prison guard Freeman also blamed appellant for opening the door to the jail cell. R. 168, ll. 2-22. Guard Bobby Mace claimed appellant told him: “If Inmate Pauling was gonna throw urine on him that he would knock the shit out of him.” R. 194, l. 19 – 195, l. 4.

As stated, appellant exercised his right to remain silent, and not to testify. In the state’s closing “reply” argument the Assistant Attorney General argued: “You don’t have to take the defendant’s word. You don’t have to take Pauling’s word.....” Defense counsel Johnston immediately asked to approach the bench, and it was uncontested that he objected, and he moved for a mistrial because the Assistant Attorney General was commenting on appellant’s right to remain silence and his right not to testify. All of this was put on the record, and the judge confirmed he denied the mistrial motion at that time. R. 333, l. 7 – 334, l. 19; R. 357, l. 1 – 359, l. 10.

Discussion

It is improper for the State to comment in any manner about a defendant’s exercise of his right to remain silent or his right not to testify. See State v. McIntosh, 358, S.C. 432, 592 S.E.2d 484 (2004); State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986); State v. Sweet, 342 S.C. 342, 536 S.E.2d 91 (2000); State v. McClure, 342 S.C. 403, 537 S.E.2d 273 (2000). As seen, the State had other prison guards insinuate that appellant was acting improperly by opening the prison cell door, and throwing down the keys where he knew that inmate Pauling was agitated. Pauling claimed he was afraid of appellant, and that appellant had been threatening him.

Again, while different inferences can be drawn from the videotape of the physical exchange between appellant and inmate Pauling, it seems the reality of the situation was that Pauling was getting ready to attack appellant when appellant struck him. However, the testifying witnesses gave the jury a very different picture of what occurred. It was undisputed that the physical exchange between the men was the reason for the misconduct in office indictment of which appellant was convicted.

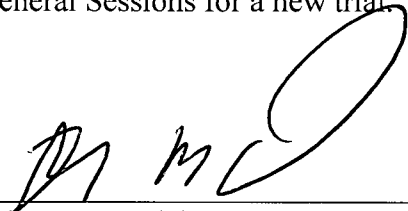
The comment on appellants right to silence was particularly egregious in this case because inmate Pauling testified at length about his version of what occurred, and some witnesses seemed to corroborate his version, at least in part, of events. Conversely, appellant exercised his right to remain silent, and not to testify.

When a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard but rather a determination that must be made with the specific difficulty facing the trial judge in mind. See State v. Rowlands, 343 S.C. 454, 439 S.E.2d 717 (Ct.App. 2000). Here, again, the error was particularly harmful because inmate Pauling testified at length, was corroborated in part by other witnesses, and where appellant did not testify. The jury had to find appellant was partly in the wrong because they convicted him of misconduct in office.

Although defense counsel here waived a jury instruction on self-defense after appellant was found not to be immune from prosecution, the jury could have found appellant not guilty on both counts when an objective person watches the videotape of the exchange in this case. A mistrial given these facts was manifestly necessary to ensure appellant got a fair trial. See State v. Parker, 391 S.C. 606, 707 S.E.2d 799 (2011); State v. Rowlands, *supra*.

CONCLUSION

By reason of the forgoing argument, appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

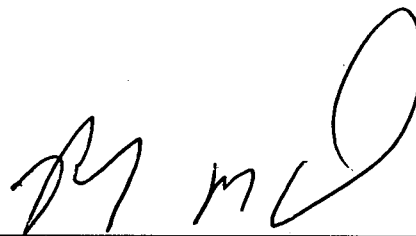
ATTORNEY FOR APPELLANT

This 14th day of August, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 14, 2018

A handwritten signature in black ink, appearing to read 'RM Dudek', written over a horizontal line.

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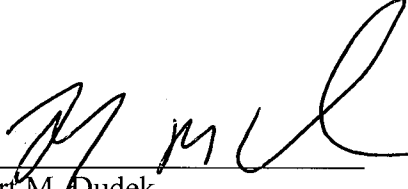
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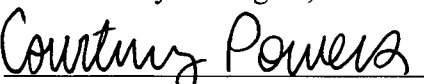
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of August, 2018.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of August, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.