STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HEYWARD LEGREE MARTIN, III,

APPELLANT

APPELLATE CASE NO 2017-000559

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow third-party guilt testimony from the Appellant and his son that the day before the child was hospitalized, while he was in the care of his mother in a spare bedroom of Appellant's home, they heard the child crying loudly and then heard a loud bang and the crying immediately stopped?

STATEMENT OF THE CASE

In June of 2015, the Aiken County Grand Jury indicted Appellant Martin for inflicting great bodily injury on a child, indictment #2015-GS-02-895. (R. p. 307- 308). On February 14, 2017, Appellant proceeded to jury trial before the Honorable Doyet A. Early, III. Brian Katonak represented Appellant at trial. Ashley Hammack and Samuel Grimes prosecuted the case. The jury returned a verdict of guilty and Judge Early sentenced Appellant to twenty (20) years in prison. A timely notice of intent to appeal was served on February 20, 2017. This appeal follows.

STATEMENT OF FACTS

In the spring of 2014, Melodi Tucker and her infant son, Dominick, were dropped off at the home of Appellant, Heyward Martin, and his wife Melissa. (R. p. 197, lines 1-17). Heyward and Melissa Martin lived in the home with Melissa's two children, Kaitlynn and Jason who were approximately twelve and fourteen years of age. (R. p. 166, lines 2-13). Although Appellant was not their biological father, the children considered him to be their father. (R. p. 166, lines 14-25). Melodi and her baby had no other place to go so the Martins took them in and allowed them to stay in their spare bedroom. (R. p. 167, lines 1-24). Melodi did not work. Melissa Martin worked at the Kangaroo Convenience Store and paid for the baby's diapers and formula. (R. p. 168, lines 3-20). Melissa also took Melodi to her drug classes three times a week at the Aiken Center. (R. p. 170, lines 11-22).

For most of the day on June 10, 2014, Melodi and the baby stayed in the spare bedroom at the Martin House. (R. p. 187, line 18 – p. 188, lines 1-4). Melodi had drug class that night but Melissa was unable to take her because Melissa had to work. (R. p. 169, line 19 – p. 170, lines 1-10). Melodi had recently started dating Steven Tyler Hill and made arrangements for him to take her to drug class. (R. p. 38, line 4 – p. 39, 70 -72). Hill testified that he picked Melodi up from the Martin home at about 4:30 PM on June 10, 2014. (R. p. 39, line 12 – p. 40, lines 1-25). Melodi left the baby at the Martin home with Appellant, and the two children.

Appellant testified that when Melodi left he placed the baby in a swing and the baby went to sleep. (R. p. 199, lines 20-21). Once the baby was asleep, Appellant moved him to the bed in Appellant's room. (R. p. 199, line 20 – p. 200, lines 1-5). During this time the son, Jason, was in the living room playing Xbox. (R. p. 188, line 13 – p. 189, lines 1-7). The daughter, Kaitlynn, was also in the living room until she was sent to her room for being rude to her brother.

(R. p. 181, lines 1-21). At trial Appellant admitted telling police that he stayed in the bedroom with the baby when in fact he left the baby alone in the bedroom and went on the porch to smoke a cigarette and work on a lawnmower. (R. p. 200, lines 2 – p. 201, lines 1-12). At some point Jason heard a thump in the bedroom where the baby was sleeping and alerted Appellant. (R. p. 190, lines 9-17). Appellant checked on the baby and found him face down on the floor. (R. p. 201, line 24 – p. 202, lines 1-4). The baby was not crying but had a small cut on his chin. (R. p. 202, lines 5-16). Appellant checked the baby out, later changed his diaper and fed him a quarter of a bottle. (R. p. 202, lines 13-25). About thirty minutes later Appellant changed the baby's diaper again and noticed that the baby was stiffening up. (R. p. 202, line 25 – p. 203, lines 1-5). The baby's condition continued to deteriorate. Appellant tried to call Melodi but was unable to reach her. (R. p. 204, line 25 – p. 205, lines 1-3). Appellant admitted that he should have called 911. (R. p. 205, lines 9-15).

Meanwhile, Hill picked Melodi up from her drug class at about 8:30 PM. (R. p. 42, lines 20-22). Hill and Melodi stopped at a gas station and then went to Hill's cousin's house for about twenty to thirty minutes. (R. p. 43, lines 3-13). When Melodi and Hill returned to the Martin home, Appellant advised them that the baby had been having seizures. (R. p. 44, line 21 – p. 45, lines 1-9). Hill and Melodi drove the baby to the hospital where he was diagnosed with bleeding on the brain and placed on life support. At the time of trial, the child, Dominick Tucker, was three years old and in the custody of his biological father, Branden Griffis. Melodi Tucker did not testify at trial.

ARGUMENT

The trial judge erred in refusing to allow third-party guilt testimony from the Appellant and his son that the day before the child was hospitalized, while he was in the care of his mother in a spare bedroom of Appellant's home, they heard the baby crying loudly and then heard a loud bang and the crying immediately stopped.

Prior to trial the State moved to prohibit the Defense from introducing evidence of third-party guilt as it related to Melodi Tucker, the mother of the injured child. (R. pp. 16-21). The State specifically stated, "But what I would move in limine is to limit discussion by the defense, particularly in opening, of evidence of third party guilt." (R. p. 16, lines 15-17). Rather than making the proffer on third-party guilt evidence and obtaining a ruling on the issue prior to opening statements, defense counsel waited until after the State rested. In opening statement defense counsel told the jury, "We don't dispute the child suffered trauma. What we are disputing, however, is that my client is the one who inflicted it." (R. p. 33, lines 22-24).

When the proffer was finally made Appellant testified that on Monday June 9, 2014, the day before the child was hospitalized, Melodi came home to the Martin house, where she was staying, at approximately 10:00 or 10:30 AM and immediately took the child back to her room. (R. p. 148, line 25 – p. 149, lines 1-15). Melodi spent Sunday night June 8, 2014, with her boyfriend of two weeks, Steven Tyler Hill. (R. p. 38, lines 4-7; p. 55, line 7 – p. 56, lines 1-23). She left her child with the Martins that Sunday night. (R. p. 56, lines 24 – p. 57, lines 1-21). Appellant testified that during the day of Monday June 9, 2014, "I heard a bunch of screaming. I mean, the baby was crying really, really loud. And then we heard – not only I, but my son and a friend of mine, Danny Young, Jr., heard a loud bang, wham, everything went silent simultaneously." (R. p. 149, lines 20-24). Appellant testified that he heard this at approximately 4:00 PM. (R. p. 150, lines 6-8).

Additionally during the proffer Appellant's son Jason Taylor testified that Melodi kept the child in her room during the day on June 9, 2014. (R. p. 154, lines 2-9). When asked if he heard the child cry, Jason testified, "Yes. She was crying – he was excessively and then all of a sudden there was a thud and it stopped." (R. p. 154, lines 10-14). Jason confirmed that both his dad and his dad's friend Danny heard what he heard. (R. p. 154, lines 15-17).

The judge refused to allow the proffered testimony stating:

> I deem that all to be within the third-party guilt umbrella and I will not allow it. Without any further connection -- I mean, you've made no further connection whatsoever, particularly with the enormity of these injuries, and if that happened -- the fact that you got a crying baby and a thump and then you got 24, perhaps even longer, passing and the child had these types of injuries, if that happened that far in advance, you'd have to have some testimony -- the child would be dead by the time she turned it over to the defendant.
>
> If it hadn't been for the intubation and immediate attention, the child's life was threatened any way by the time he got to the hospital. You just have not made any causal connection between crying and a thump and somebody else being responsible for this horrible injury. Respectfully denied.

(R. p. 162, line 10 – p. 163, lines 1-2). The trial judge erred.

Dr. Lyle Eugene Fisher treated the child at the hospital on June 10, 2014, and was qualified as an expert in pediatric critical care medicine at trial. (R. p. 88, lines 2-11). Dr. Fisher confirmed that he gave law enforcement a range of within a day as to when the child sustained the injuries. (R. p. 121, lines 14-24). The trial judge erred in refusing to allow testimony from Appellant and his son that they both heard the child crying loudly the day before, heard a loud thud or bang and then the crying stopped. When the crying and loud bang was heard the day before, the child was in the care of his mother, Melodi Tucker. On June 10, 2014, the child was in the care of his mother until 4:30 PM when she left for her drug class. The testimony from

Appellant and his son about what they heard on June 9, 2014, constitutes proper admissible third-party guilt evidence that the jury should have considered.

In State v. Swafford, 375 S.C. 637, 641, 654 S.E.2d 297, 299 (Ct. App. 2007), the South Carolina Court of Appeals wrote:

> South Carolina adopted the widely accepted rule regarding the admissibility of third-party guilt evidence in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). The rule states:
>
> [E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible ... [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.
> Gregory, 198 S.C. at 104-05, 16 S.E.2d at 534-35 (internal citations omitted).

In light of Dr. Fisher's time range of within a day, the testimony about the crying and the loud bang the day before, when the child was in the care of his mother, is inconsistent with Appellant's guilt and raises a reasonable inference or presumption as to his own innocence. This testimony does far more than cast a bare suspicion on the guilt of Melodi, the mother. The testimony establishes a connection between events that happened the day before and the hospitalization of the child the next day which points to the mother as the guilty party.

In Holmes v. South Carolina, 547 U.S. 319, 324–25, 126 S. Ct. 1727, 1731, 164 L. Ed. 2d 503 (2006), the Court wrote:

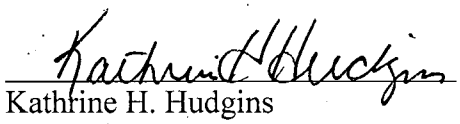
> "[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." United States v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998); see also Crane v. Kentucky, 476 U.S. 683, 689–690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); Marshall v. Lonberger, 459 U.S. 422, 438, n. 6, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983); Chambers v. Mississippi, 410 U.S. 284, 302–303, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct. 648, 17

> L.Ed.2d 606 (1967). This latitude, however, has limits. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " Crane, supra, at 690, 106 S.Ct. 2142 (quoting California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); citations omitted).

The trial judge in the present case did not refuse to admit the third-party guilt evidence based on any purported strength of the State's evidence as in Holmes. Instead, the judge in the present case refused to admit the testimony about events the day before based on the erroneous finding that there was no connection between those events and the injuries to the child. Based on the evidence at trial, the jury could have found that the injuries to the child happened the day before when the child was in the care of his mother and not on the evening of June 10, 2014, when the child was in the care of Appellant. By excluding the testimony the trial judge deprived Appellant of his constitutional right to present a complete defense.

CONCLUSION

Based on the above argument, this Court should reverse Appellant's conviction and sentence and remand the case for a new trial.



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This 2nd day of May, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

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."

May 2, 2018

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