

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ALLENDALE COUNTY

HONORABLE PERRY M BUCKNER, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT

V.

LAPARIS S. FLOWERS,

APPELLANT

APPELLATE CASE NO. 2018 – 000099

PRO SE BRIEF OF APPELLANT

RECEIVED
MAR 18 2019
SC Court of Appeals

LA'PARIS S. FLOWERS
APPELLANT PRO SE
LEE CORRECTIONAL INSTITUTION
990 WISACKY HIGHWAY
BISHOPVILLE, SC 29010

TABLE OF AUTHORITIES

1. State v. Telfaire 469 F.2 552 (1972) page 3
2. State v. Boyd 35 SC 269 14 S.E 620 (1892) page 5
3. State v. Greene 704 F.3d 298 (2013) page
4. Neil v. Biggers 409 US AT 198, 93 S. Ct 375 page 5
5. State v. Taylor 360 SC 74, 81 (2014) page 7

STATEMENT OF ISSUE ON APPEAL

Although the trial court considered the out of courts identifications to be admitted in trial, it failed to instruct the jury on factors to consider when determining whether accuracy of identification of defendant was proven beyond reasonable doubt. In a case where identification is crucial, it is harmless error IF general instructions focus jury on the need for proving defendant was offender beyond reasonable doubt, jury was made aware of weaknesses in identification, danger of misidentification was minimized by corroborative evidence, and court specifically told jury that when determining witness credibility. It should consider circumstances that witnesses were in. The Telfaire instructions explain that the jury be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before they may convict, Telfaire 469 F.2d at 552. Further, the jury instructions specifically inform the jury that it should consider capacity and opportunity of the witness to observe the reliability of the offender, witness own recollection, and view the strength and the circumstances under which it was made inconsistent identifications made, and credibility of the witness. A curative instruction to the jury would have overcome any potential prejudice to defendant and cured possible error. All three witnesses initially could not recall any specifics about the identity of the shooter, type of car driven, or gun used, or relevant details from the evening. Ultimately, the witness identifications were contradictory and led to defendant's conviction.

STATEMENT OF THE CASE

On January 8, 2018, Appellant proceeded to trial before the Honorable Perry M. Buckner and jury. Tameaka Leggette and Brian Hollen served as the assistance Solicitors and Joshua Knaer Jr. represented appellant. Following a four-day trial, the jury found appellant guilty as indicted. Judge Buckner sentenced appellant to forty-five (45) years incarceration on the murder charge; thirty (30) years on each of the attempted murder charges, and five (5) years on the possession of a weapon charge.

The appellant has filed a motion to file a supplemental record on appeal. Appellants motion was granted and supplemental record on appeal was considered served and filed.

Appellant's counsel filed a brief indicating that appeal is without merit and moves to be relieved as counsel. *Ander v. California*, 386 U.S. 738, 87 S. Ct. 1396. 18 L.E. 2d 493 (1967).

Appellant responds with this Pro Se submission requesting the Court consider the issues below for further briefing.

STANDARD OF REVIEW

The Sixth Circuit has held that giving the Telfaire instructions is a matter of discretion for the trial court. It has, at the same time, stressed that it needs to be given when the issue of identity is crucial, either where no corroboration of the testimony exists, or where the witness' memory faded by the time of trial, where limited opportunity for observation. *State v. Boyd* 620, 35, SC 269, 14 SE 620 Feb 12, 1892.

Further, courts need not inquire into the reliability of an eyewitness identification even if it was procured under suggestive circumstances. Courts employ a two-step analysis to determine the admissibility of an identification. First, the defendant must prove that the identification procedure was impermissibly suggestive. Second, the courts consider whether the testimony was nonetheless reliable. In *Neil v. Bigger*, five factors are used:

1.) the witness' opportunity to view the culprit at the time of the crime; 2.) the witness degree of attention of the crime; 3.) the witness description of the culprit prior to the identification; 4.) the witnesses level of certainty when identifying the defendant at the confrontation; and 5.) the length of time between the crime and the confrontation.

ARGUMENT ONE

- 1) The trial court failed to give the Holley-Telfaire instruction, which is given in cases where there is no evidence of identification except eyewitness testimony. It advises the jury on how to appraise a witness identification testimony emphasizing whether the witness had opportunity to observe the offender, how good the light was, the length of time between the offense and the identification and other factors. All three out of court identifications of appellant were unreliable yet most egregious one witness could not recall any specifics about the identity of the shooter, type of car driven, or gun used.

The identification Procedure used to obtain testimony of victim was unnecessarily suggestive. Factors to consider in determining the actual suggestiveness of the identification and whether there was a good reason for the failure to utilize less suggestive procedures. "If the photo array is unnecessarily suggestive, we determine under the totality of the circumstances whether it was so much so that it gave rise to substantial likelihood or misidentification amounting to a violation of due process reliability is the linchpin in determining the admissibility of identification testimony." Id at 1391

ARGUMENT TWO

The District Court failed to give the Holley-Telfaire instructions, which is given in cases where there is no evidence of identification except eye witness testimony. They advise the jury on how to appraise a witness identification testimony emphasizing whether the witness had opportunity to observe the offender, how good the light was, the length of the time between the offense, and the identification and other factors. *State v. Telfaire* 469 F.2d 552 ... Brandon Lewis first interview with police, he was unable to identify the shooter or car and did not see a weapon. He told law enforcement he did not know who shot him. Brandon Lewis' second identification was unduly suggestive. Lewis was in constant pain and was prodded by an investigator to identify Appellant. Lewis was hesitant to identify Appellant. (p. 107, lines 9-25). Lewis' court testimony was that he did not remember who shot him on December 6th. (p. 307, lines 1-24; p. 308, lines 1-2)

Tyquan Charlton expressed a similar difficulty in recollection with inconsistencies between trial testimony and out-of-court identifications, such that he could not recall any specifics about the evening. Most telling, the initial photo lineup shown him had appellant's photo on top but when seen at trial it had been re-arranged (!) (p262, lines 16-25) Tyquan Charlton also did not remember how he ended up in Russell Smarts car the night of the incident. (p. 269, lines 1-15) Tyquan Charlton also testified that he gave the Police / Law Enforcement false information in his past.

Jerrell Murray could not recall any specifics about the evening; witness interview was recorded as well as rehashed. (p. 94, Lines 14-25) No description was given; witness also indicated at that time he didn't know who was in the car with him. A suggestive out-of-court identification

procedure created a very substantial injustice of irreparable misidentification. "Defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive." *State v. Taylor* 360 SC 74, 81 (**where Law enforcement stated appellant named several times on recordings (see related recordings in this case)**)

CONCLUSION

Appellant respectfully requests the court order a new trial based upon the trial court's error in failing to instruct jury on factors to consider when determining whether accuracy of identifications of defendant were proven beyond a reasonable doubt in case. Additionally, whether the trial court erred by allowing unreliable witness testimony in when the suggestive police procedures used denied appellant a fair trial.

Done this 14th day of March, 2019



LA'PARIS S. FLOWERS
APPELLANT PRO SE
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990 WISACKY HIGHWAY
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ALLENDALE COUNTY

CASE No. 2018 – 000099

THE STATE OF SOUTH CAROLINA
Respondent

v.

LA'PARIS S. FLOWERS
Petitioner

CERTIFICATE OF SERVICE

RECEIVED

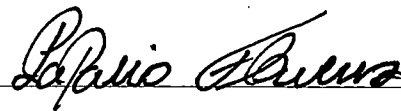
MAR 18 2019

SC Court of Appeals

I, the undersigned, do hereby certify that I have served a copy of this foregoing instrument upon the clerk of court, via properly addressed U.S. Mail, with first-class postage prepaid affixed thereto, by placing into the internal mailing system as made available to inmates for legal mail, at the State Correctional Institution Lee County. The Defendant / Petitioner / Movant further requests that a copy of this his motion be forward to all interested parties via the CM / ECF system, as he is detained, indigent, and has no other means.

Done this 14th, Day of **March**, 2019

Respectfully Submitted,



LA'PARIS S. FLOWERS #375098

APPELLANT PRO SE

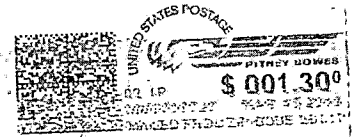
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SC Court of Appeals

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