

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-001488

THE STATE,

Respondent,

vs.

JAMAR ANTONIO HUGGINS,

Appellant.

FINAL BRIEF OF RESPONDENT

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JUN 19 2018
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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in finding the State's witness's claim identifying someone else as her accomplice was merely cumulative to her trial testimony that Appellant was not her accomplice. Because the affidavit contradicted her trial testimony that she did not know Appellant, it was more inculpatory than exculpatory. The alleged after-discovered evidence would not change the result if a new trial was held.

STATEMENT OF THE CASE

A jury convicted Appellant Huggins of burglary in the first degree, armed robbery, and kidnapping following trial on September 15-17, 2014, before the Honorable Benjamin H. Culbertson. Judge Culbertson sentenced Huggins to concurrent sentences of fifteen years' imprisonment for first degree burglary, fifteen years' imprisonment for kidnapping, and ten years' imprisonment for armed robbery.

Appellate Defense represented Huggins on his subsequent direct appeal. The convictions and sentences were affirmed by this Court. State v. Huggins, Op. No. 2016-UP-146 (S.C. Ct. App. filed March 30, 2016). The remittitur was issued on April 15, 2016.

Huggins filed a motion for new trial based on after-discovered evidence on September 27, 2016. Following a hearing before Judge Culbertson, Judge Culbertson denied the motion by order dated June 14, 2017. On March 28, 2018, Huggins moved to hold his pending post-conviction relief application in abeyance pending the outcome of this appeal.

STATEMENT OF FACTS

On December 20, 2012, Angela Eckler (Victim) heard her dog growl and knock at her door in the middle of the night. R. p. 64, lines, 13-14; p. 66, line 5 - p. 67, line 1. Thinking it was a friend she calls Grandma, she opened the door to find a well-dressed woman. R. p. 67, lines 5-15. She turned to quiet her dog, who normally never barks. The dog was perceptive: two men entered Victim's house as the woman ran off. R. p. 67, lines 16-25. Victim was put in a headlock and dragged around the house. The men demanded money and held her captive in her bathroom. R. p. 68, line 8 - p. 69, line 16. The men turned their attention to her twelve year-old daughter. From the bathroom, she heard her daughter telling the men her only money was her birthday money in her purse on the table. After robbing the child of her birthday money, the cowardly robbers pushed her daughter into the bathroom. R. p. 69, lines 11-19. After the robbers left, Victim drove herself and her twelve-year-old daughter to the police department. R. p. 70, lines 1-9. She was unable to identify the men but was able to identify the woman. R. p. 71, lines 2-12. The police also talked to Victim's fiancé, who identified the woman who came to the door based on the description given. R. p. 98, line 12 - R. p. 99, line 8. Deaungela Montgomery was the woman acting as a decoy for the robbers. She directed the police to Huggins and he was arrested and charged with first-degree burglary, armed robbery, and kidnapping. R. p. 99, line 16 – p. 100, line 22.

At the time of her testimony, Deaungela Montgomery was incarcerated for two counts of armed robbery. R. p. 49, lines 2-9. Montgomery was not offered anything from the State to testify at Huggins' trial, nor did she receive assistance from the State when sentenced for the crime in this case. R. p. 49, line 19 - p. 50, line 5. When asked whether she recalled telling a detective a man named Junk was with her during the crime and if she picked him out in a photograph, she claimed

she assumed it was Junk but did not know him. R. p. 51, lines 14-18. When asked about giving a statement to police, she testified she probably did but did not know because she “can’t really remember nothing.” R. p. 51, line 22 - p. 52, line 3. She claimed, “I remember the name [Junk]. So, yes, I did make the statement, but what I’m telling you is this is not the same person.” R. p. 52, lines 4-8. Montgomery testified she did not remember describing Junk to police as far as his height and the fact that he had long dreads, but she did recall saying he had hair and a grill in his mouth. R. p. 52, line 13 - p. 53, line 2. She testified she recalled describing where Junk lived and telling police the car they drove to Victim’s house belonged to Huggins and Huggins drove it to Victim’s house and went into Victim’s house wearing a mask and carrying a weapon. R. p. 53, lines 9-25. She recalled telling her interviewer she went to Victim’s house and knocked on the door. R. p. 54, lines 18-20. Montgomery admitted when Victim opened the door, she asked if Dre was there and Victim answered he was not. R. p. 54, line 24 - p. 55, line 1. Montgomery admitted she walked back to the car while Huggins and another man went into the house. R. p. 55, lines 1-9.

Montgomery admitted Junk went with her to Victim’s house, but claimed Huggins did not look like the same person because his hair was different. R. p. 61, lines 4-15. On cross-examination, defense counsel asked Montgomery if Huggins was not the person who invaded the home with her, and she said no. R. p. 62, lines 2-7. On redirect, she claimed she identified Junk as the person but did not know Junk’s real name. R. p. 62, lines 12-20. When asked whether she identified the person in a picture a detective showed her as Junk, she claimed the picture was already circled when it was shown to her. R. p. 63, lines 1-5. However, she agreed she identified that person as Junk. R. p. 63, lines 6-9. On the other hand, she claimed she did not know whether that was the person who went into Victim’s house, and when asked whether he was the person who drove the car to Victim’s

house, she said he was not. R. p. 63, lines 10-15.

Outside the presence of the jury, the State asked to impeach Montgomery by allowing publication of her statement taken by a detective who was about to testify. R. p. 78, line 23 – p. 79, line 2. The trial court did not allow the statement to come in because Montgomery admitted to making the statement. R. p. 93, lines 8-16.

Detective Jonathan Martin with the Horry County Police Department interviewed Victim at her home a few days after the incident. R. p. 96, lines 1-11. He spoke to Victim's fiancé, Adrian (also known as Dre and Drake), who identified Montgomery. R. p. 98, line 10 - p. 99, line 2. He developed Huggins as a suspect because of his interview with Montgomery. R. p. 99, line 13 – p. 100, line 5. Montgomery identified Huggins as Junk and described him in detail—long hair, early 30s, black male, grill in his teeth—and also where he lived and the vehicle he drove. R. p. 100, lines 3-14. Detective Martin located Huggins' house and found the Cadillac Montgomery described on the street. He connected both the house and the vehicle to Huggins. R. p. 100, lines 15-18.

On cross-examination, Detective Martin explained he told Montgomery she could help herself by identifying the other parties involved but did not mention Huggins. R. p. 105, lines 17-21. He testified he never heard Huggins' name until Montgomery provided the information that led to Huggins. R. p. 112, lines 20-23. He also never pointed out anybody for her to identify; she was the one who identified Huggins as a suspect. R. p. 105, line 25 - p. 106, line 9.

ARGUMENT

The trial court did not err in finding the state's witness's claim identifying someone else as her accomplice was merely cumulative to her trial testimony that Appellant was not her accomplice. Because the affidavit contradicted her trial testimony that she did not know Appellant, it was more inculpatory than exculpatory. The alleged after-discovered evidence would not change the result if a new trial was held.

Appellant Huggins argues the trial court erred in denying his motion for a new trial. Although his co-defendant, Montgomery, previously identified Huggins as one of the two cowardly robbers during her interview with law enforcement, she claimed at trial Huggins was not the man with whom she planned the robbery. Montgomery did not testify at the motion for new trial, instead Huggins' counsel relied solely on the affidavit attached to his new trial motion. R. p. 248. The trial court found the claim identifying Jasmine Mitchell as the person she planned the robbery with was merely cumulative to her trial testimony in which she claimed someone other than Huggins was the robber. The trial court did not abuse its discretion in denying the motion for a new trial.

Huggins' counsel presented some sort of visual presentation rather than present testimony. R. p. 244, lines 16-19. The "new evidence" was Montgomery claimed Jasmine Mitchell was the robber wearing the mask, not Huggins. Although already incarcerated at the time of trial, Montgomery claimed she was scared of Mitchell then, but apparently now she is no longer scared. R. p. 248, lines 17-22.

Montgomery's new version wanes rather than waxes in exculpatory value. At trial Montgomery claimed to not know Huggins: "They asked me was it Junk. So I assumed that that was Junk. I, I don't remember him. I don't know him." R. p. 51, lines 16-18. The prosecutor asked Montgomery, "Did you make a statement to police identifying Junk as the one who went with you

and Ty to do an armed robbery? Montgomery replied, "I remember the name. So, yes, I did make the statement but what I'm telling you is this is not the same person." R. p. 52, lines 4-8. Later she testified, "Junk went with me, nut what I'm telling you is I don't remember him. I don't know who he is." R. p. 61, lines 4-7.

The prosecutor asked if she told detectives she was scared of Junk, and she claimed, "I remember telling them that. Yeah. **Because I didn't know who he was. I don't know anything about him.** So, yea, I did say it." R. p. 61, lines 16-22. She claimed on redirect, "I didn't know his real name until I read my motion of discovery." R. p. 62, lines 16-17. She claimed she identified Junk from the lineup because the picture of him was already circled. R. p. 63, lines 1-5.

In her affidavit, Montgomery admits she knows Huggins. She claimed she asked Huggins to use his car and he said no ("I called first, him Jamar Huggins about using his car, told me no."). Then Tyjuan asked Huggins and he let Tyjuan use the car, but did not know they were planning a robbery ("We never told Jamar about the robbery. Junk was sleeping.") R. p. 233. She claimed she and the robbers used the car without Huggins' knowledge. She even purported to know Huggins' character: "Jamar is a calm, cool guy, laid back. Jamar just hangs out. I have never known Jamar to get in trouble." R p. 234. Contradicting her trial testimony, Montgomery clearly knew Jamar was "Junk": "Jamar Huggins (Junk) was not present during the robbery." R. p. 233.

Huggins' counsel offered to present other "evidence" but just argued facts without presenting supporting evidence. For instance, he tried to explain why Montgomery picked Huggins out of the lineup, arguing he looked like Mitchell. R. p. 249. See Bowers v. Bowers, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are . . . not evidence."). Counsel's claim of misidentification speciously ignores the affidavit counsel submitted to the court in which

Montgomery professes to know not only Huggins' identity, but also his characteristics.

In Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983), this Court held that:

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

The trial court correctly noted Montgomery claimed at trial that Huggins was not a robber, and in the affidavit, still claimed Huggins was not the robber. So the trial court correctly determined the evidence is merely cumulative. Further, the short answer is Montgomery was not after-discovered evidence. She is not recently discovered. Her generation of a new version of events does not entitle Huggins to a new trial. At trial, she admitted she knew the robber's identity but did not want to say who it was. R. p. 60, lines 5-7 ("I didn't want to say the name that we got it from, and I still don't want to say the name."). The identity of this person could be elicited at trial, and therefore, her ability to identify Jasmine Mitchell was not new evidence.

It certainly would not change the result at trial. The affidavit confirms that Montgomery knows Huggins and that Huggins' car was used in the robbery. It is more inculpatory than exculpatory, and any reasonable juror would realize Montgomery is merely attempting to generate a new story that more closely aligns with the State's evidence. In State v. Marks, 70 S.C. 448, 50 S.E. 14 (1905), the Supreme Court refused to suspend an appeal for a witness who would impeach a State's witness. The Supreme Court noted, "Whether the deceased had a knife in his hand during the difficulty with the defendants was strenuously contested on the trial, and to reopen that matter, merely because someone has been discovered who has heard one of the state's witnesses make

statements contradictory of his testimony on the trial, would establish dangerous precedent.” Id. at 448, 50 S.E. at 15. The Court quoted prior precedent to observe, “If such a ground be held sufficient to sustain a motion like this, it would be opening the door to fraud and perjury, and cause interminable delay in the trial of causes.” Id. (citation and internal quotation marks omitted). The Supreme Court’s concern in Marks applies here. Given three opportunities, Montgomery has supplied three different versions about the robbery she participated in. The affidavit reveals Montgomery perjured herself at trial when claiming she did not know Huggins.

The Supreme Court subsequently quoted Marks, and also observed, “The ‘whereabouts’ or ‘identification’ of the appellant are not new questions raised by this motion, as both his identification and whereabouts were at issue in the trial and were decided by the jury adversely to him.” State v. Clamp, 225 S.C. 89, 95, 80 S.E.2d 918, 921 (1954). The Supreme Court held, “We see no reason to hold that the alleged newly discovered evidence would probably change the result if a new trial were granted, and this in itself would be a sufficient reason for the refusal of appellant’s motion, aside from what has been said above.” Id. at 96, 80 S.E.2d at 921; see also State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1988) (finding one reason the after-discovered evidence claim failed was its cumulative nature: “Appellant would have little or no more evidence to argue to the jury than he did in the first trial.”); State v. Wells, 249 S.C. 249, 153 S.E.2d 904 (1967) (approving the trial court’s finding that the affiant’s evidence, claiming a state’s witness admitted receiving vitamin B-12 shots rather than shots to induce an abortion from the defendant was “cumulative and/or impeaching” because it merely impeached the state witness and was cumulative to the defendant and his employees’ claims they only gave the state’s witness vitamin B-12 shots).

In the instant case, Montgomery’s contention that Huggins did not participate in the robbery

did not change since trial. What changed is her important admissions in her affidavit that she knew Huggins, meaning she did not misidentify Huggins to law enforcement as she perjurally claimed at trial. In isolation, these two factors warrant denying the motion for new trial. In tandem, it is clear the so-called after-discovered evidence would not have changed the result if a new trial was held.

Granting a motion on after-discovered evidence is not favored and reviewing courts will not disturb the trial court's denial absent an error of law or abuse of discretion. Needs. "A motion for new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge." State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978). The credibility of newly discovered evidence is for the trial court to determine. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). "Only the trial court and not the appellate court has the power to weigh the evidence; the trial court's judgment will not be disturbed except for error of law or abuse of discretion." State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (citing Irvin). "In this post-trial setting, our jurisprudence recognizes the gate-keeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) *quoted in Harris*. When testimony is in conflict and depends on the credibility of the new evidence, it is the duty to the trial judge to assess the evidence. State v. Deese, 266 S.C. 534, 538, 225 S.E.2d 175, 176 (1976).

In the instant case, at trial, Montgomery claimed Huggins was not one of the robbers. Her testimony did not change in this regard, and therefore, the testimony in this regard was merely cumulative. On the other hand, the testimony is impeaching her claims she did not even know Huggins. So it certainly would not change the result if a new trial was held. Therefore, the trial court did not err in denying the motion for new trial based on after-discovered evidence.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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