STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Allendale County

Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAYCOBY TERREAK WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2017-000872

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to allow appellant to cross-examine the State's key witness about the potential sentences he faced on pending charges?

STATEMENT OF THE CASE

On July 23, 2015, an Allendale County grand jury indicted appellant for murder. R. 303. On April 3, 2017, appellant was tried before the Honorable Perry M. Buckner and a jury. R. 1. Korey Williams and Brian Hollen represented the State. R. 2. Ian Deysach represented appellant. R. 2. The jury convicted appellant. R. 290, ll. 17 – 22. Judge Buckner sentenced appellant to thirty-five years' imprisonment. R. 302, ll. 8 – 13. This appeal follows.

ARGUMENT

The trial judge erred in refusing to allow appellant to cross-examine the State's key witness about the potential sentences he faced on pending charges.

The State's Witnesses

On May 26, 2015, someone shot James Spellman ("Spellman") at the Pinewood Apartments in Allendale. R. 137, ll. 8 – 21. The police did not recover any physical or forensic evidence of any importance from the scene of this shooting. R. 175, ll. 21 – 24. Appellant gave a statement to the police denying any involvement in the crime. R. 163, ll. 3 – 10. The police never talked to the person who borrowed the car the State alleged was used to commit the crime. R. 177, l. 3 – 178, l. 18. The police obtained no usable cell phone evidence. R. 190, l. 18 – 191, l. 13. The lead SLED agent could not recall whether he ever went to the apartment complex in Columbia to investigate appellant's alibi. R. 186, l. 8 – 188, l. 6.

The State did present several witnesses of dubious value and credibility. The State's first three witnesses all lived at the apartment complex, but did not witness the shooting and offered little evidence that appellant was the shooter. Franklin Williams heard a gunshot, looked out the window, and saw a blue car leave. R. 28, ll. 9 – 21. Three or four people left in the car. R. 33, l. 21 – 34, l. 4. Even though he knew the defendant, he testified he did not see him at the apartments at the time of the shooting. R. 30, ll. 12 – 25. Franklin Williams took out the trash shortly before the shooting, saw four or five people in the breezeway, but did not recognize anyone. R. 32, l. 6 – 33, l. 24. The blue car was at the apartment complex when Franklin Williams took out the trash. R. 34, ll. 2 – 4.

Debentis Breeland ("Breeland") also lived at the apartments and knew appellant. R. 36, ll. 12 – 54. He was outside, sitting on the steps, talking to Spellman and DeQuincy Best

("Best"). R. 39, l. 24 – 40, l. 7. Breeland went inside his apartment to get ready for work and heard a gunshot. R. 40, l. 8 – 41, l. 4. Breeland came outside and "didn't see nobody." R. 41, ll. 5 – 9. Spellman was lying on the ground, bleeding and Breeland helped Best put him in a car. R. 41, l. 10 – 42, l. 7. Breeland then left. R. 42, ll. 6 – 7.

The State's third witness, Tiffany Loadholt ("Loadholt"), lived in the apartments and was dating Spellman. R. 51, l. 2 – 52, l. 14. Appellant was the father of Loadholt's children and the State argued Spellman's romantic relationship with Loadholt was appellant's motive for shooting him. R. 51, ll. 13 – 14. R. 249, ll. 7 – 15. Loadholt was inside her apartment during the shooting and never heard a gunshot. R. 54, ll. 5 – 21. When she went outside, Breeland told her to go to the hospital. R. 55, ll. 5 – 13. She did not see a blue car nor did she see anyone other than Breeland and Best. R. 54, l. 5 – 58, l. 6.

Appellant turned himself in to the police. R. 147, ll. 18 – 20. Investigators obtained nothing of evidentiary value from the crime scene. R. 175, ll. 21 – 24. The police never found the gun used to shoot Spellman. R. 140, ll. 17 – 19. Appellant denied committing the crime and said he was in Columbia. R. 144, l. 14 – 145, l. 2. R. 163, ll. 3 – 6. The police did not fully investigate appellant's statement that he was in Columbia. R. 186, l. 15 – 188, l. 1. The police did not have any usable cell phone evidence. R. 191, ll. 7 – 13. Therefore, the State's case rested on the testimony of Quincy Best and Rahem Devoe.

The Testimony of Best and Devoe

The State's key witnesses were Best and Rahem Devoe ("Devoe") and, as will be explained below, both had substantial credibility problems. Best and Devoe claimed they heard a gunshot and then turned and saw appellant standing over Spellman holding a gun. R. 73, ll. 6 –

16. R. 107, l. 8 – 108, l. 10. Both knew appellant. R. 65, ll. 8 – 10. R. 101, ll. 2 – 12. Both were Spellman's cousins. R. 65, ll. 16 – 17. R. 101, ll. 2 – 12.

Best saw the blue Ford arrive at the apartments and appellant and Devoe got out of the car. R. 71, ll. 2 – 21. Devoe went up the stairs to Breeland's apartment. R. 71, ll. 16 – 21. Appellant shook Best's hand. R. 72, ll. 13 – 16.

Best saw a pistol tucked into the side of appellant's pants. R. 72, ll. 17 – 20. Appellant turned around and started walking back down the stairs. R. 73, ll. 1 – 7. Best turned his back, then heard a gunshot. R. 73, ll. 6 – 16. He heard Devoe yell at appellant to stop. R. 73, ll. 6 – 16. He saw appellant standing over Spellman holding a gun, preparing to shoot again. R. 73, ll. 6 – 16. Appellant then ran. R. 75, ll. 11 – 17. Best put Spellman into his car and drove him to the hospital. R. 78, ll. 4 – 22.

On cross-examination, appellant impeached Best with his failure to tell the police that Devoe arrived at the apartments with appellant. R. 81, l. 18 – 84, l. 13. Best never mentioned the important fact of his cousin Devoe's presence until a few weeks before trial. R. 84, ll. 10 – 18. Nor did Best mention Breeland's name. R. 87, ll. 12 – 18.

Devoe said on the day of the shooting, appellant, "PC," and "one other guy" named "Gummie" came to his uncle's house. R. 179, ll. 18 – 24. R. 119, ll. 15 – 20. "PC" was Ty Moultrie's nickname. R. 102, l. 25 – 103, l. 3. The group "[r]ode around smoking" and wound up at the apartments so Devoe could talk to his cousin, Breeland. R. 104, ll. 2 – 16.

When Devoe got out of the car, he saw Spellman, Best, and "a few more people." R. 105, l. 24 – 106, l. 7. Devoe was walking up the stairs to Breeland's apartment when he heard the gunshot. R. 107, ll. 4 – 15. He turned and saw appellant standing over Spellman. R. 107, l. 25 – 108, l. 10. Devoe caught a ride and fled the scene. R. 110, ll. 6 – 14.

Appellant tried to impeach Devoe with a statement he gave SLED. R. 115, ll. 3 – 23. Devoe testified inconsistently about who called him that day, appellant or "PC." R. 117, l. 19 – 119, l. 1. Devoe testified inconsistently about whether he had a phone, whether his phone was broken, and trying to call 911. R. 120, l. 12 – 124, l. 13.

The Trial Court's Refusal to Allow Full Impeachment of Devoe

Appellant was unable to fully impeach Devoe on his pending charges. R. 97, l. 3 – 99, l. 7. R. 112, l. 20 – 114, l. 4. Before Devoe testified, Judge Buckner placed his ruling following a bench conference on the record. R. 97, l. 3 – 99, l. 7. Devoe had a pending armed robbery charge and pending drug charges. R. 97, l. 3 – 99, l. 7. Judge Buckner ruled that appellant could only ask Devoe whether he had been charged with armed robbery and drug offenses, but could not ask about the potential penalties for these charges. R. 97, l. 3 – 99, l. 7. The court ruled that "penalty was a matter for the Court." R. 97, l. 3 – 99, l. 7. Appellant cited Rule 608(c), SCRE for his ability to cross-examine Devoe about the penalties he faced. R. 97, l. 3 – 99, l. 7. Judge Buckner again denied appellant's request. R. 97, l. 3 – 99, l. 7.

The solicitor attempted to take the sting out of the questioning on Devoe's pending charges at the end of direct-examination. R. 111, ll. 7 – 17. When asked if he had pending charges, Devoe responded, Yeah. Like two." R. 111, ll. 7 – 17. When asked what the charges were, Devoe said, "Sale undercover and attempt to, I think, robbery or something." R. 111, ll. 7 – 17. Appellant attempted to clarify these charges, but when asked what kind of drug, Devoe claimed not to know whether he was charged with marijuana or methamphetamine. R. 113, ll. 7 – 16. Devoe agreed he had a pending armed robbery charge. R. 113, ll. 17 – 21. Devoe also agreed that his charges would be prosecuted by the same solicitor's office. R. 113, l. 20 – 114, l.

4. Appellant abided by Judge Buckner's ruling and did not ask Devoe about the penalties he faced for these charges. R. 113, l. 7 – 114, l. 4.

The Trial Court Erred in Limiting Appellant's Cross-Examination for Bias

The jury never heard that Devoe faced a mandatory minimum sentence of ten years' imprisonment or a maximum of thirty years' imprisonment for armed robbery. S.C. Code Ann. § 16-11-330(A). The trial court erred in preventing appellant from impeaching Devoe with the penalties he faced as evidence of his bias and motive to testify against appellant. State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012). Rule 608(c) allows a defendant to cross-examine a witness for "[b]ias, prejudice or any motive to misrepresent." Rule 608(c), SCRE.

In Gracely, the State's witnesses faced significant mandatory minimum sentences. Gracely at 373-74, 731 S.E.2d at 885-86. The trial judge "improperly prevented questioning which would have examined the extent of that bias and the witnesses' possible motivations for testifying against Appellant." Id. "The fact that a cooperating witness avoided a *mandatory minimum* sentence is critical information that a defendant must be allowed to present to the jury. Id. at 374-75, 731 S.E.2d at 886 (emphasis in original). See also State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991). The Gracely Court held the error could not be harmless because of the "abysmal credibility" of the State's witnesses and cited the "heavy reliance on circumstantial evidence." Gracely at 375, 731 S.E.2d at 886.

The error in appellant's case is even worse than the error in Gracely. The trial judge allowed the defendant in Gracely to cross-examine the State's witnesses about sentencing, but not mandatory minimums. Id. at 366-371, 731 S.E.2d at 882-84. Here, the trial judge refused to allow **any** cross-examination about Devoe's sentencing exposure. The Gracely Court found reversible error even though the defendant was able to impart some knowledge about the

witnesses' potential sentences to the jury. Appellant's jury knew nothing about the seriousness of the crimes and the long prison term Devoe was facing. The jury therefore was prevented from learning the extent of Devoe's motivation to lie and please the solicitors and police officers prosecuting him.

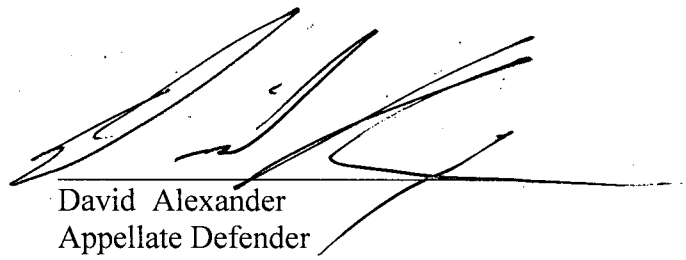
This Court reversed a conviction soon after Gracely because the trial judge refused to allow specific questioning regarding the potential sentence a witness faced. State v. Pradubsri, 403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013). The trial judge in Pradubsri only allowed the defendant to ask whether the witness faced "a substantial amount of time." Id. at 275, 743 at 101. Citing the principle that a defendant has the right to cross-examine on any fact "which tends to show interest, bias, or partiality of the witness," the Court held the limitation on the defendant's questions was error. Id. at 276-80, 731 S.E.2d at 102-04. The Pradubsri Court stated this evidence regarding potential legal exposure was "critical" to showing the witness's "potential bias." Id. at 104, 743 S.E.2d at 280. See also State v. Mizzell, 349 S.C. 326, 334-35, 563 S.E.2d 315, 319 (2002) (reversing despite trial court allowing defendant to ask whether witness could go to jail for a "long time").

Again, like Gracely, the jury in Pradubsri knew more about the witness's sentencing exposure than appellant's jury knew about Devoe. The Pradubsri jury knew the witness faced significant time. Appellant's jury had no idea about the length of a sentence for armed robbery. Appellant's jury had no idea that Devoe faced a mandatory minimum. No forensic evidence existed, the police investigation was lacking, and the State's other witnesses either did not see the crime or had credibility problems. Best and Devoe were both related to Spellman. Multiple unidentified people were at the scene. The trial court's error cannot be harmless beyond a

reasonable doubt. If the error in Pradubsri was reversible, the error in appellant's case also requires reversal.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.



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This 5th day of June, 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."

June 5, 2018.

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