

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CEDRIC FLOOD,

APPELLANT

Appellate Case No. 2011-196546

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court judge erred when he improperly coerced the jury into rendering a guilty plea after sending them back to deliberate a second time, and having given them a second, coercive jury charge, after they insisted they were deadlocked, in violation of S.C. Code Ann. §14-7-1330 (1976)?

STATEMENT OF THE CASE

Cedric Flood was indicted by the Orangeburg County grand jury for criminal sexual conduct, 1st degree and kidnapping. He was tried before the Honorable Edgar W. Dickson and a jury between July 19-21, 2011. He was represented by Douglas Mellard and Mark Wise, Esquires. Glenn Justis and Harrison Bell represented the state. The jury acquitted Flood of criminal sexual conduct, but convicted him of kidnapping. He was sentenced to life in prison pursuant to S.C. Code Ann. §17-25-45 (1976).

This appeal timely follows.

ARGUMENT

The trial court judge erred when he improperly coerced the jury into rendering a guilty plea after sending them back to deliberate a second time, and having given them a second, coercive jury charge, after they insisted they were deadlocked, in violation of S.C. Code Ann. §14-7-1330 (1976).

Cedric Flood was tried for criminal sexual conduct, 1st degree and kidnapping. At the conclusion of trial, the jury acquitted Flood of criminal sexual conduct, but found him guilty of kidnapping. This occurred after the judge gave the jury a highly coercive jury charge, after having already given them an Allen¹ charge, which renders this verdict constitutionally infirm.

During deliberations, the jury sent the trial court judge a note that informed him that they could not come to a unanimous decision on either charge. The judge summarily concluded “they probably haven’t been given enough time to deliberate is the Court’s position.” R. 71, l. 24- 72, l. 3. This note was marked as Court’s Exhibit #8, and the Orangeburg County Clerk of Court has informed counsel that this note is in a sealed envelope. And see Supp. R. 2 which notes the sealed envelope with question from jury. The judge then gave the jury an Allen charge. R. 73, ll. 5- 18. The jury was then sent out to deliberate again.

The jury then sent out two more notes, marked as Court’s Exhibits #9 and #10, and the trial court judge addressed the jury:

THE COURT: I’ve gotten two notes from you. I did not respond to the first one, so I got the second one that's essentially the same thing. You

¹ Allen v. United States, 164 U.S. 492 (1896) (defining the charge used to encourage a deadlocked jury to reach a verdict).

know, it reminds me of when my children repeat things like I was hard of hearing, and I apologize for not getting back to you sooner than that. But let me tell you, I'm not going to recharge the law to you again, I'm not going to do that. But I want ya'll—if ya'll have ever been involved in Court proceedings before, ya'll know that it takes a lot of people a lot of time and a lot of work just to get to Court. Okay? And we've been in this trial now for a few days, and I know these deliberations have been hard on ya'll, and I know that they are some very hard decisions that you are being asked to make, and I know that there's serious disagreement among you. But I want to remind you that if you think it is tough on you, I want you to think about how tough it is on the parties.

Now, the parties want you to make a decision in this case, and they want you to make that decision without compromising any of your convictions or your beliefs. Now, considering that and considering that it's still early in the day, I want to apologize to you and tell you that rather than try this case again I'm treating this as a work day. Sometimes you got to work overtime. So, I'm asking y'all to return to your deliberations and bring back a fair, just and impartial verdict. Okay? Thank ya'll very much.

R. 75, ll. 16- 14.

Two hours later, the jury came back with its verdict.

The trial court judge erred when he coerced the jury into returning a guilty verdict after they repeatedly informed him that they would not be able to reach a unanimous decision.

It is universally recognized that a genuine inability of the jury to reach a unanimous verdict constitutes a manifest necessity for the declaration of a mistrial. 21 Am.Jur.2d *Criminal Law* §402 (2003). The trial judge . . . has a duty to urge the jury to reach a verdict, provided he does not coerce them. State v. Williams, 344 S.C. 260, 263-64, 543 S.E.2d 260, 262 (Ct.App.2001). The typical judicial mechanism for encouraging an indecisive jury is the Allen charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors. If a jury, following additional deliberations in the wake of an Allen charge, remains


deadlocked, section 14-7-1330 of the South Carolina Code of Laws is triggered. The statute reads, in pertinent part, “[b]ut if [the jury] returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.” S.C. Code Ann. §14-7-1330 (1976). See State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004).

Here, the trial court judge erred by not comporting with the applicable statute and by charging the jury with a highly coercive jury charge. Given that the resulting verdict was for only one charge, it appears that the judge’s admonitions resulted in a compromise verdict that has resulted in Flood’s receiving a life sentence, based on a prior conviction. The prejudice is overwhelming. Flood was denied his right to due process, respectfully Flood passes Court to reverse his convictions and remand this case for trial.

CONCLUSION

For the preceding reason, Flood respectfully asks this Court to reverse his conviction and remand his case for trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender


ATTORNEY FOR APPELLANT

This 3rd day of October, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 3, 2012



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THE STATE,

RESPONDENT,

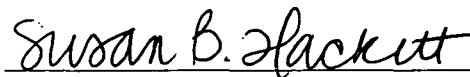
V.

CEDRIC FLOOD,

APPELLANT

CERTIFICATE OF SERVICE

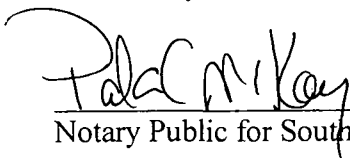
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Katie Keeney, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 3rd day of October, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of October, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.