

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Robert E. Hood, Circuit Court Judge

ORIGINAL

LEROY GLOVER, JR.,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED
JAN 09 2020
S.C. SUPREME COURT

APPELLATE CASE NO 2019-000812

BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to sever Petitioner's trial from the trial of his co-defendant brother because the co-defendant was going to present evidence that a purported confession by the co-defendant was actually a letter written by Petitioner and sent to the solicitor's office?

STATEMENT OF THE CASE

In November of 2013, the Orangeburg County Grand Jury indicted Petitioner, Leroy Glover, for murder, indictment #2013-GS-38-1624. (App. pp. 770-771). On September 14, 2015, Petitioner, with his co-defendant and brother, Jason Glover, proceeded to jury trial before the Honorable Maite Murphy. Eduardo Curry represented Petitioner at trial. Michael Culler and Glen Walters represented the co-defendant. Donald N. Sorenson prosecuted the case. The jury found the co-defendant not guilty but found Petitioner guilty. Judge Murphy sentenced Petitioner to life in prison. (App. p. 772). The notice of intent to appeal was not properly filed.

On January 25, 2016, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 773-779). The State filed a return on January 11, 2017. (App. pp. 780-785). On May 23, 2017, an evidentiary hearing was held before the Honorable Robert E. Hood. Jonathan D. Waller represented Petitioner at the PCR hearing. Ruston W. Neely represented the State. In a written order signed November 13, 2017, Judge Hood granted relief pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), but denied relief on all other grounds. (App. pp. 831-838). PCR counsel did not receive a copy of the order until May 15, 2019. A timely notice of intent to appeal was served on May 15, 2019. This brief pursuant to White and separately filed petition for writ of certiorari follow.

STANDARD OF REVIEW

Trial judges should be “cautious in allowing joint trials” and must assure protection of a defendant’s constitutional rights. State v. Singleton, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991) (reversing conviction obtained in joint trial because defendant’s Sixth Amendment right of confrontation was violated). “Denial of a severance motion is an abuse of discretion if unsupported by the evidence or controlled by an error of law.” State v. Barnes, 421 S.C. 47, 51, 804 S.E.2d 301, 304 (Ct. App. 2017) (finding any error in denying severance harmless and calling the State’s decision to try defendants together “fraught with risk”).

ARGUMENT

The trial judge erred in refusing to sever Petitioner's trial from the trial of his co-defendant brother because the co-defendant was going to present evidence that a purported confession by the co-defendant was actually a letter written by Petitioner and sent to the solicitor's office.

Petitioner and his brother, Jason Glover, were charged in the fatal shooting of Richard Michael Carter, Senior. The two men were tried together. Prior to trial counsel for co-defendant Jason moved for a continuance in order to obtain a handwriting expert to determine if a letter, dated January 3, 2014, sent to the solicitor's office, purportedly written by Jason Glover, admitting guilt and stating that his brother, Petitioner Leroy Glover¹, had nothing to do with the crime was actually written by Petitioner. (App. pp. 10-14). Counsel had already contacted the expert but was not certain if the expert would have enough time to complete the examination. (App. p. 13, line 23 – p. 14, lines 1-2). The trial judge denied the motion for continuance. (App. p. 18, lines 12-p. 19, lines 1-12). The expert was able to complete his examination and was called as a witness by the co-defendant. The witness opined that the January 2014, confession letter, signed by Jason Glover, was written by Petitioner. (App. p. 682, lines 9-22).

Immediately following the denial of the motion for a continuance, Petitioner moved to sever his trial from the trial of his brother co-defendant. (App. p. 19, line 15 – p. 20, p. 21, lines 1-13). The judge denied the severance motion stating:

All right. As all parties know, criminal defendants are jointly tried for murder, not entitled to separate trials as a matter of right, and the Court finds that a joint trial would not compromise a specific trial right of the co-defendant or prevent the jury from making a reliable judgment in this case. The Court will specifically instruct the jury to – make an individual instruction to protect the individual rights of each of the defendants to ensure that prejudice does not result from a joint trial, so your motion to sever is respectfully denied.

¹ Counsel for the co-defendant refers to Petitioner, Leroy Glover, as "Smoke." (App. p. 11, line 14).

(App. p. 24, lines 8-18). The trial judge erred. While trial counsel did not specifically argue that the co-defendant's presentation of evidence that a purported confession by the co-defendant was actually written by Petitioner supported the severance motion, the judge was aware that this was going to be an issue based on the earlier motion for continuance made by the co-defendant.

The co-defendant, Jason Glover, initially admitted to an investigator that he shot Carter. (App. p. 472, line 2 – p. 473, lines 1-24). Jason's testimony at trial differed from the statement he initially gave to the investigator. At trial Jason claimed that Petitioner shot Carter in a back room of Petitioner's trailer while Jason was in the living room playing games. (App. p. 620, line 1 – p. 621, lines 1-21). According to Jason, his only involvement was in helping to dispose of the body. (App. pp. 621-626). Jason denied writing the confession sent to the solicitor's office in January of 2014. (App. p. 675, lines 15-21). According to Jason, the handwriting was his brother's. (App. p. 675, lines 22-25). The January 2014, confession letter was marked as Defense Exhibit number one and admitted into evidence without objection². (App. p. 676, lines 1-9). Jason Glover, the co-defendant, was found not guilty by the jury.

In closing argument counsel for co-defendant Jason argued, based on the evidence presented by the co-defendant at trial, that Petitioner tried to set Jason up by sending the confession letter to the solicitor's office and signing Jason's name. (App. p. 702, lines 1-19). The State did not seek to admit the January 2014, confession letter at the joint trial. The evidence presented by the co-defendant that Petitioner tried to frame him constituted improper bad act evidence against Petitioner. The trial judge erred in refusing to grant the severance motion based on the improper evidence presented by the co-defendant.

² Trial counsel's failure to properly object to the admission of the letter is addressed in the separately filed petition for writ of certiorari.

In State v. Barnes, 421 S.C. 47, 51–52, 804 S.E.2d 301, 304 (Ct. App. 2017), the South

Carolina Court of Appeals wrote:

Codefendants in a murder case are not automatically entitled to separate trials. State v. Kelsey, 331 S.C. 50, 73, 502 S.E.2d 63, 75 (1998). They are entitled to a severance “only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt.” State v. Dennis, 337 S.C. 275, 282, 523 S.E.2d 173, 176 (1999). *See also* Hughes v. State, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001); *see also* Zafiro v. United States, 506 U.S. 534, 540, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993) (“[I]t is well-settled that defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials.”). We will only reverse the denial of a severance motion when it is reasonably probable the defendant would have received a more favorable outcome had he been tried separately. Hughes, 346 S.C. at 559, 552 S.E.2d at 317.

In State v. Halcomb, 382 S.C. 432, 439–40, 676 S.E.2d 149, 152–53 (Ct. App. 2009), the

South Carolina Court of Appeals wrote:

A motion for severance is addressed to the sound discretion of the trial court. State v. Harris, 351 S.C. 643, 652, 572 S.E.2d 267, 272 (2002); State v. Walker, 366 S.C. 643, 656, 623 S.E.2d 122, 128 (Ct.App.2005). The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion. Harris, 351 S.C. at 652, 572 S.E.2d at 272; State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. Walker, 366 S.C. at 656, 623 S.E.2d at 129; State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct.App.2002).


There is no clearly defined rule for determining when a defendant is entitled to a separate trial, because the exercise of discretion means that the decision must be based upon a just and proper consideration of the particular circumstances which are presented to the court in each case. State v. McIntire, 221 S.C. 504, 504, 71 S.E.2d 410, 415 (1952); State v. Avery, 374 S.C. 524, 533, 649 S.E.2d 102, 107 (Ct.App.2007); State v. Castineira, 341 S.C. 619, 624, 535 S.E.2d 449, 452 (Ct.App.2000), *aff'd*, 351 S.C. 635, 572 S.E.2d 263 (2002).

The trial judge abused her discretion in refusing to sever Petitioner's trial from the trial of his co-defendant brother. The particular circumstances of this case, with the co-defendant presenting evidence of an otherwise inadmissible bad act, require severance. The specific factual

situation presents more than antagonistic defenses. The joint trial, under the unusual and specific facts of this case, prevented the jury from making a reliable judgment about Petitioner's guilt.

CONCLUSION

Based on the above argument, this Court should reverse Petitioner's convictions and sentences and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of January, 2020.

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LERROY GLOVER, JR.,

APPELLANT

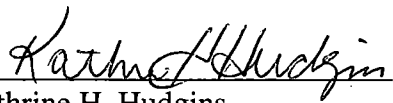
V.

STATE OF SOUTH CAROLINA,


RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Sara Gunton, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Appellant pursuant to White v. State has been served on Leroy Glover, Jr., #314746, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 9th day of January, 2020.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of January, 2020.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029.