STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2018-000144
Circuit Court Case No. 2002-GS-10-7745

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANTWON DEANGELO GOODWIN

APPELLANT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

In December 2002, the Charleston County Grand Jury indicted the Appellant for the murder of Freddie Green. The Appellant proceeded to trial by jury on this charge on January 6-9, 2003, before the Honorable Paul M. Burch. He was represented at this proceeding by James W. Smiley, IV, Esquire. At the conclusion of the trial, the Appellant was found guilty as charged. Judge Burch sentenced the Appellant to life imprisonment. On the sentencing sheet, Judge Burch specifically noted that the Appellant's post-trial motions were reserved for a later date.

In a related matter, the Appellant filed an Application for Post-Conviction Relief with the Charleston County Clerk of Court's Office on August 31, 2005. An order dismissing the PCR without prejudice was filed on September 26, 2007. The order dismissed the PCR due to pending post-trial motions.

On March 5, 2014, Tricia A. Blanchette, Esquire, was substituted as counsel for the Appellant in General Sessions proceedings below. In March 2017, the Appellant filed a motion for a new trial pursuant to Rule 29(a) and (b), SCRCrimP. A hearing was convened on these motions on August 31, 2017, before Judge Burch. By order filed January 19, 2018, Judge Burch denied all requests for a new trial.

The Appellant timely served a notice of appeal on January 31, 2018. The Appellant now contends that his conviction and sentence should be reversed.

STATEMENT OF FACTS ADDUCED AT TRIAL

Around approximately 10:30 P.M. on December 12, 2000, the victim, Freddie Green, was shot in the back of the head outside George's Sweet Shop, a bar and poolhall located in Charleston. The gunshot resulted in his death.

Witnesses who were at the scene described a relatively calm atmosphere prior to the shooting. See ROA pp. 69-71; Trial Tr. pp. 170-172 (Wilhemina Bailey); ROA pp. 95-97; Trial Tr. pp. 196-198 (Danielle Thompson); ROA pp. 140-143; Trial Tr. pp. 241-244 (Lakesha Graham). However, once a shot was fired, individuals scattered in every direction. A few witnesses testified that they saw either the victim or the Appellant at the location prior to the shooting. See ROA p. 97; Trial Tr. p. 198 (Danielle Thompson); ROA pp. 141-142; Trial Tr. pp. 242-243 (Lakesha Graham).

The authorities did not develop the Appellant as a suspect for almost two years following the shooting. See ROA pp. 389-391; Trial Tr. pp. 490-492. The police focused on the Appellant after speaking with Edwin Middleton, a Charleston resident who knew both the Appellant and the victim. Middleton testified at trial that he observed the following sequence of events the night of the shooting: the Appellant walked into the business; the victim was behind the Appellant; the victim turned around; the Appellant came back out, held up his hand, and shot the victim in the back or neck area. ROA pp. 177-179; Trial Tr. pp. 278-280. No other witnesses corroborated Middleton's account of the shooting. Furthermore, no forensic evidence tied the Appellant, or any individual, to the crime.

In support of Middleton's testimony, the State presented two witnesses who claimed to have spoken to the Appellant regarding the incident. Both witnesses were incarcerated at the time of trial. Darrell Royal was impeached with a statement he made to authorities that Goodwin

confessed to him that he had killed the victim. See ROA pp. 300-301; Trial Tr. pp. 401-402. Royal denied at trial ever making such a statement. Maurice Fields testified that Goodwin told him that he had a discussion with the victim the night of the incident and that when the victim turned to walk away, Goodwin shot him in the head. ROA p. 346, lines 12-18; Trial Tr. p. 447, lines 12-18.

The Appellant did not testify at trial nor did he present any evidence. Following approximately two hours of deliberation, the jury found the Appellant guilty as charged.

ARGUMENT

I. The lower court erred in denying the Appellant's motion for a new trial pursuant to Rule 29(a), SCRCrimP.

A. How the Issue Arose Below

Following the jury's verdict, the trial court sentenced the Appellant to life imprisonment. ROA p. 500, lines 4-13; Trial Tr. p. 690, lines 4-13. Defense counsel then stated "I have several Motions. Can I reserve that until later, Your Honor?" ROA p. 500, lines 14-16; Trial Tr. p. 690, lines 14-16. The trial judge responded: "Certainly. I will be back here two weeks from now." ROA p. 500, lines 17-18; Trial Tr. p. 690, lines 17-18. On the sentencing sheet, the trial court specifically noted that the Appellant's motions were reserved for a later date. ROA p. 504.

Despite this colloquy, no formal motion was filed, and no subsequent hearing was held in the months following the trial. The next activity in the case occurred when the Appellant filed an Application for Post-Conviction Relief in 2005. This application was denied without prejudice in 2007 due to the parties' agreement that timely post-trial motions had not been presented to the trial court and remained pending. PCR Order of Dismissal.

The Appellant then filed a post-trial motion based on Rule 29(a) and (b), SCRCrimP, in 2017. In the Rule 29(a) portion of that motion, the Appellant "would move to renew all arguments motion[s], objections and exceptions made at trial." ROA p. 508.

A hearing was convened on the Rule 29 motion on August 31, 2017. The State argued that the trial court "meant that I will hear your posttrial motions when I am back here in two weeks" when the judge stated that he would be back in two weeks following sentencing. ROA p. 530, lines 9-11. The State further argued that the Rule 29(a) portion of the motion should be dismissed because "they were never filed" until 2017. ROA p. 530, lines 12-24.

The trial court issued an order on January 19, 2018, denying the Rule 29 motion in all respects. Importantly for this appeal, the trial court concluded with regard to the Rule 29(a) motion that

> [T]he Defendant's request for a new trial pursuant to Rule 29(a), SCRCrimP, should be denied as it was not timely filed. In pertinent part, Rule 29(a), SCRCrimP, provides that "except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence". Although I extended this time by allowing the Defendant to make his post-trial motions when I returned to Charleston two weeks after the Defendant's conviction, no post-trial motions were filed or heard. Even assuming this time was extended again by the Court when the Defendant's PCR was dismissed in 2007, and once again when Ms. Blanchette was substituted as Defendant's counsel in March of 2014, the motion for a new trial pursuant to Rule 29(a), SCRCrimP, was not filed until March 29, 2017, some three years after Ms. Blanchette became involved in the case. There has been no satisfactory explanation for the delay of over 14 years in filing post-trial motions pursuant to Rule 29(a). I find the delay is unreasonable and the relief requested pursuant to Rule 29(a), SCRCrimP, is time barred.

ROA p. 588. The trial court then concluded that "there was no error of law controlling the Court's rulings which would entitle the Defendant to a new trial." ROA p. 588.

The Appellant now contends that the trial court's ruling on the timeliness of his Rule 29(a) motion was erroneous and should be reversed by this Court.

B. Standard of Review

"Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. "[I]f the motion is not made within ten days of sentencing, the court will be without jurisdiction to entertain the motion." State v. Campbell, 376 S.C. 212, 216, 656 S.E.2d 371, 373 (2008). The authority granted by Rule 29(a) extends to only the subject matter set forth in the post-trial motion,

and does not confer upon the trial judge unfettered authority over the case. See State v. Warren, 392 S.C. 235, 708 S.E.2d 234 (Ct. App. 2011).

C. Discussion

At the outset, it is important to note that the Appellant does not contend that the trial court erred in denying the Appellant's motion for a new trial pursuant to Rule 29(a), SCRCrimP, on the merits. Instead, the Appellant contends that the trial court erred in finding the motion untimely. It is critical for the motion to have been made timely because if the motion was filed in an untimely manner, then the Appellant's appeal from his underlying conviction and sentence is also untimely. See Rule 29(a), SCRCrimP ("The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion.")

The Appellant contends that post-trial motions were timely made. Both the trial transcript and the sentencing sheet reveal that the Appellant intended, and the judge understood, the Appellant to have made a timely post-trial motion at the time of trial. Following the imposition of sentence, defense counsel stated "I have several motions. Can I reserve that until later, Your Honor?" ROA p. 500, lines 14-16; Trial Tr. p. 690, lines 14-16. The trial judge then responded "Certainly. I will be back here two weeks from now." ROA p. 500, lines 17-18; Trial Tr. p. 690, lines 17-18. The post-trial motion was then memorialized in the sentencing sheet which noted that the Appellant's motions were reserved for a later date.

The central issue is which authority reserved its right during this discussion: the Appellant to make a post-trial motion or the trial court to hear a motion that had already been made. The Appellant contends that the latter interpretation is the proper conclusion to reach. Specifically, the Appellant argues that the reservation of the post-trial motions by the trial court vested the trial

court with the authority to consider the motions when it reconvened in this matter because the trial court reserved its ability to rule on them for a date that extended beyond the ten-day time frame set forth in Rule 29(a). This was even noted by the trial court in its order denying the motions as untimely, where the trial court found that it "extended th[e] time" permitted by Rule 29(a) for filing post-trial motions during sentencing when the judge stated that he would return to hear the motions two weeks after sentencing. The trial court, however, never possessed the authority to extend the filing time. See State v. Campbell, 376 S.C. at 216, 656 S.E.2d at 373 ("[I]f the motion is not made within ten days of sentencing, the court will be without jurisdiction to entertain the motion.") Consequently, the trial judge's statement that he would return in two weeks can only be properly considered a reservation of the authority to hear motions already made because to hold otherwise would be to render the trial judge's reservation of the motions a nullity. Stated differently, if the trial judge's statement is to have any meaning, the only interpretation that gives it validity is for it to constitute a reservation of the trial judge's authority to hear post-trial motions.

Although the Appellant has not been able to locate a published opinion where a similar situation was encountered, the Appellant would note that this Court has interpreted a civil order in a similar fashion in the unpublished decision of Baird Pacific West v. Blue Water Sunset Park, Inc., 2004-UP-011 (S.C. Ct. App. filed Jan. 14, 2004). In Baird, the trial court granted summary judgment for Respondent Blue Water but reserved "Blue Water's claim for attorney fees." Id. at *1. Baird argued that the trial court's subsequent ruling in favor for Blue Water on the matter of attorney's fees was barred because Blue Water "did not file a motion within the ten-day time period prescribed by Rule 54, SCRCP." Id. at *4. This Court rejected that argument, concluding that "the circuit court's order expressly recognized that it reserved the matter of attorney's fees for future determination. Under these circumstances, the circuit court's continuing jurisdiction was in no

manner contingent upon Blue Water filing an additional motion within ten days following the grant of summary judgment." Id. at *5.

Here, as in Baird, the specific reservation of a post-judgment motion vested the trial court with the continuing authority to hear the matter. No specific written motion needed to be filed again to invoke that authority. While the present situation is highly unusual—the post-trial motion was not heard for approximately fourteen years after the entry of judgment—it was still proper because of the trial court's reservation of its authority to hear the motion that was made in a timely fashion. Accordingly, the Appellant contends that the trial court erred when it found that no post-trial motion had ever been made and that it did not have the authority to rule on the motion when it reconvened in this matter in 2017. Accordingly, the Appellant's post-trial motions, and this appeal, should be found to be timely.

II. The lower court erred in denying defense counsel's motion to be relieved as counsel due to a conflict of interest.

III. The lower court abused its discretion in admitting evidence that defense counsel represented Darrell Royal in an unrelated matter prior to the Appellant's trial.

A. How the Issue Arose Below

At trial, the State introduced evidence that Darrell Royal, a friend of the Appellant, had been told by the Appellant that the Appellant shot the victim in this case. ROA p. 300, line 3-p. 301, line 6; Trial Tr. p. 401, line 3-p. 402, line 6. The State introduced this evidence by impeaching Royal with his statement to the authorities, which he denied giving and testified that he could not remember numerous portions of the statement.

At the outset of the trial, the trial judge took up numerous pretrial motions filed by the Appellant. Of particular import was a motion filed to exclude the testimony of Royal or, alternatively, to continue the case to determine whether or not a conflict of interest existed. ROA p. 2, lines 2-10; Trial Tr. p. 60, lines 2-10. Defense counsel informed the trial court that he had been notified the weekend prior to trial that Royal would be called as a witness. ROA p. 3, lines 16-22; Trial Tr. p. 61, lines 16-22. He additionally stated that he represented Royal "approximately six months ago in Charleston County General Sessions Court, and I've represented him in the past." ROA p. 2, line 24-p. 3, line 2; Trial Tr. p. 60, line 24-p. 61, line 2. Furthermore, defense counsel stated that he had "specifically spoken with him in this case." ROA p. 3, lines 3-4; Trial Tr. p. 61, lines 3-4. The trial court did not make a ruling at that point in time, but permitted defense counsel and the prosecutor to meet with Royal. See ROA pp. 5-8; Trial Tr. pp. 63-66.

The day following this meeting, defense counsel informed the trial court that "[i]n connection with this case, Darrell Royal was a suspect in the beginning. Darrell Royal had communications with me as his attorney. Those are attorney-client conversations." ROA p. 11, lines 4-8; Trial Tr. p. 84, lines 4-8. Defense counsel then stated that he saw two potential resolutions to the situation: either have the Appellant waive any conflict of interest or to be relieved as counsel. ROA p. 12, lines 14-12; Trial Tr. p. 85, lines 14-20. The Appellant did not want to choose either option. ROA p. 12, lines 21-25; Trial Tr. p. 85, lines 21-25. So defense counsel then requested that Royal's testimony be excluded or that he be relieved as counsel. ROA p. 13, lines 1-18; Trial Tr. p. 86, lines 1-18. The trial court rejected both options and found that

> [N]obody has said that there is a conflict. Mr. Smiley has done exactly what he was supposed to do under the Code of Ethics. He has notified his client and he has notified the Court that there is that potential. And his client has told me that he understands that and he wants to keep him. So I am going to abide by that.

ROA p. 17, line 24-p. 18, line 6; Trial Tr. p. 90, line 24-p. 91, line 6.

Royal, thereafter, was permitted to testify. Not only did he testify regarding his statement, but an extensive amount of testimony was elicited, both by the State and the defense, regarding the fact that defense counsel had previously represented Royal and that defense counsel had spoken to Royal. ROA p. 309, line 1-p. 310, line 8; p. 322, line 17-p. 326, line 6; p. 330, line 16-p. 331, line 12; Trial Tr. p. 410, line 1-p. 411, line 8; p. 423, line 17-p. 427, line 6; p. 431, line 16-p. 432, line 12. Defense counsel renewed his objection to this line of testimony prior to the State's introduction of the fact of representation on direct as well as prior to his questioning Royal about his representation; these objections were overruled by the trial court. See ROA p. 309, lines 10-12; p. 322, lines 11-14; Trial Tr. p. 410, lines 10-12; p. 423, lines 11-14. Notably, defense counsel did not ask Royal about his status as a suspect early in the investigation.

During the State's closing argument, the State argued that Royal's statement was the truth and that he was lying during his testimony at trial. Moreover, the State argued, over the repeated objections of defense counsel, that it was highly relevant that the Appellant's attorney had also represented Royal:

> Remember what I asked him? I asked a very direct question, "Have you had an opportunity to speak with Jim Smiley?" Nope.
>
> Mr. Smiley: I object. This is improper argument.
>
> Mr. Kent: It came out in his testimony, Your Honor.
>
> The Court: Go ahead.
>
> Mr. Kent: I asked, "Did you speak to Jim Smiley?" "No." I asked him again, "Did you speak to Jim Smiley at any time this week?" "No." Okay.
>
> Then on cross-examination, Mr. Smiley asked him, "We spoke on Monday, didn't we?" "Yes." "We spoke yesterday morning before you testified, earlier yesterday morning?" "Yes, we spoke." Interesting, isn't it?
>
> It is even more interesting who Darrell Royal's former lawyer was.
>
> Mr. Smiley: Your Honor, I am going to object again. I think that it is improper argument to suggest that I would suborn perjury in this courtroom.
>
> Mr. Kent: Your Honor, that's—Thank you, Your Honor.
>
> I just want you all to think about that.

ROA p. 480, line 23-p. 481, line 23. Trial Tr. p. 595, line 23-p. 596, line 23. The Appellant now contends that the trial court erred in numerous respects: in denying defense counsel's motion to be relieved, in admitting evidence that defense counsel represented Royal, and in permitting the State's closing argument seizing on that evidence, was erroneous.

B. Standard of Review

In criminal cases, this Court reviews errors of law only and is bound by the trial court's factual findings unless those findings are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2016). The admission or exclusion of evidence is within the discretion of the trial court, and the trial court's decision will not be reversed absent an abuse of discretion. State v. Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010). An abuse of discretion occurs when the trial court's ruling either lacks evidentiary support or is controlled by an error of law. Id.

A motion to relieve counsel is also "addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant[']s." Id. "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Id. at 152-153. "If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (citing Zuck v. Alabama, 588 F.2d 435, 439 (5th Cir. 1979)). If an actual conflict of interest exists, then prejudice is presumed. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

"Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. If evidence is relevant, it may still be excluded by the trial court "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue

tendency to suggest decision on an improper basis." State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). This Court gives great deference to a trial court's decision to admit evidence. See State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

C. Discussion

The Appellant contends that the trial court erred in denying defense counsel's motion to be relieved as counsel. Assuming that the trial court properly denied that motion, then the Appellant argues that the trial court erred in admitting evidence that defense counsel previously represented Royal. Each contention will be addressed in turn.

1. Defense Counsel Labored Under an Actual Conflict of Interest

The Appellant contends that defense counsel suffered from an actual conflict of interest due to his prior representation of Royal, and that the trial court abused its discretion in denying defense counsel's motion to be relieved as counsel. Accordingly, the Appellant asserts that the proper remedy is a new trial.

"An actual conflict of interest occurs 'when a defense attorney places himself in a situation inherently conducive to divided loyalties.'" Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). Conflicts may arise due to concurrent representation of multiple clients with adverse interests, see Rule 1.7, RPC, Rule 407, SCACR, or due to representation of a former client whose interests are adverse to a current client, see Rule 1.9, RPC, Rule 407, SCACR. This case involves the latter situation. In this case, defense counsel was required to zealously represent the Appellant while also maintaining the confidences of Royal. He could not do both effectively due to the conflict of interest.

Specifically, defense counsel failed in his duty to zealously represent the Appellant by failing to question Royal about his status as a suspect in the crime. As defense counsel noted at the outset of the Appellant's trial, Royal contacted him regarding that very matter. See ROA p. 11,

lines 3-8; Trial Tr. p. 84, lines 3-8. However, the possibility that Royal was a suspect in the crime did not arise at all during defense counsel's cross-examination of Royal. Instead, defense counsel made it quite clear through his questioning of Royal that he believed that Royal was not involved in the crime. See ROA p. 319, line 18-p. 320, line 24; Trial Tr. p. 420, line 18-p. 421, line 24. Defense counsel's failure to pursue a readily available line of attack against Royal demonstrates the actual conflict of interest.

The Supreme Court reached a similar result in Jordan v. State, 406 S.C. 443, 752 S.E.2d 538. In that case, defense counsel simultaneously represented Jordan on methamphetamine charges and Jordan's girlfriend on an unrelated charge. Id. at 446, 752 S.E.2d 539-540. At Jordan's trial, it was readily apparent that Jordan could purse a third-party guilt claim against Summers; however, defense counsel did not do so. Id. at 447, 752 S.E.2d at 540. The Supreme Court held than an actual conflict of interest existed due to defense counsel's simultaneous representation of Jordan and Summers and that "[t]he effect of this actual conflict of interest is best illustrated by [defense counsel]'s refusal to pursue a third-party guilt defense as to Summers." Id. at 450, 752 S.E.2d at 541.

The Appellant would also note that this case is remarkably similar to that addressed by the Fifth Circuit Court of Appeals in United States v. Martinez, 630 F.2d 361 (5th Cir. 1980). In that case, defense counsel realized that a prior client was to be called against the defendant at the outset of trial. Id. at 362. Defense counsel argued that he had a conflict of interest because to cross-examine the witness "thoroughly would require him to broach matters that [the witness] had told him in confidence, and that this discomfort might impair his effectiveness in representing Martinez." Id. The trial judge rejected the request and found that no conflict existed because

defense counsel's representation of the witness had been "completed and thus [defense counsel] had no conflict of interest that might impair his representation of Martinez." Id.

The Fifth Circuit concluded that defense counsel labored under an actual conflict of interest. Notably, the Fifth Circuit concluded that defense counsel's assertion "that effective representation of his client would compel him to violate confidences that had been entrusted to him by his prior client" demonstrated the actual conflict of interest. Id. at 363. Consequently, the Fifth Circuit found that "an attorney operates under an 'actual conflict' when he represents a criminal defendant after having previously represented a government witness in a related matter." United States v. Casiano, 929 F.2d 1046, 1052 (5th Cir. 1991) (citing Martinez).

In the present case, just as in Martinez, defense counsel was notified right before trial that one of his former clients would testify against the Appellant. Defense counsel here informed the trial court that Royal had been considered a suspect early in the investigative process and that he had spoken to Royal about the case at that time, similar to the situation present in Martinez. Further, defense counsel did not take up this line of attack in his cross-examination of Royal, reflecting defense counsel's hesitation to address matters that he had knowledge of through his prior representation of Royal. See Jordan, 406 S.C. at 450, 752 S.E.2d at 541 ("The effect of this actual conflict of interest is best illustrated by [defense counsel]'s refusal to pursue a third-party guilt defense as to Summers.") It would have been a far more effective defense strategy to allege that Royal implicated the Appellant in the crime due to his fear of being considered a suspect than to insinuate that Royal was telling the truth because defense counsel had previously represented Royal. Defense counsel could not pursue that strategy, however, because of his prior representation of Royal in this case. See id. In other words, an "alternative strategy ... was clearly suggested by the circumstances" and "defense counsel's failure to pursue that strategy ... was linked to the

actual conflict." Gonzales v. State, 412 S.C. 478, 495, 772 S.E.2d 557, 566 (Ct. App. 2015) (citing Stephens v. Branker, 570 F.3d 198, 209 (4th Cir. 2009)), overruled on other grounds by Gonzales v. State, 419 S.C. 2, 795 S.E.2d 835 (2017). Inasmuch as defense counsel labored under an actual conflict of interest, prejudice is presumed. See Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Consequently, the trial court erred in denying defense counsel's motion to be relieved, and a new trial where the Appellant can be represented by counsel unburdened by a conflict of interest should be held.

2. The Evidence of Defense Counsel's Representation of Royal Was Improperly Admitted

Assuming that defense counsel did not operate at trial under an actual conflict of interest, the Appellant contends that the jury should never have been informed of defense counsel's prior representation of Royal. Initially, the Appellant argues that this evidence was not relevant whatsoever, and should have been excluded by the trial court pursuant to Rule 402, SCRE. Defense counsel's prior representation of Royal had no bearing on "any fact that is of consequence to the determination of the action." Rule 401, SCRE. The fact that defense counsel previously represented Royal did not affect Royal's credibility or the veracity of his prior statement which he disclaimed during trial. It clearly was of no consequence as to the ultimate issue to be decided: whether or not the Appellant killed the victim. Consequently, the trial court abused its discretion in permitting any, let alone extensive, testimony about defense counsel's representation of Royal.

Furthermore, even if defense counsel's representation of Royal was somehow relevant, the Appellant contends that a proper application of Rule 403, SCRE, mandated exclusion of defense counsel's representation of Royal. See generally State v. Kelly, 118 N.C. App. 589, 599, 456 S.E.2d 861, 869 (Ct. App. 1995) ("Testimony relating to representation was, if at all, minimally relevant and of scant probative value"); United States v. Coviello, 225 F.3d 54, 69 (1st Cir. 2000)

("[*S*]*ome* evidence of prior representations may be irrelevant and unduly prejudicial") (emphasis in original). The danger from admitting the evidence is readily evident: the jury would disbelieve Royal's testimony simply because he was previously represented by the Appellant's attorney. It is an easy conclusion to reach that Royal would lie in order to curry favor with his prior attorney. This conclusion is not some obscure inference to be drawn from the evidence; instead, the State spelled it out plainly for the jury during its closing argument when it argued that it was very "interesting" who had previously represented Royal after highlighting Royal's alleged lies in his testimony. ROA p. 481, lines 15-16; Trial Tr. p. 596, lines 15-16. This was an improper basis for the jury to consider in evaluating Royal's credibility and the trial judge erred in permitting the jury to draw those conclusions from introducing the evidence of defense counsel's representation.

Finally, the error was not harmless. Cf. State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008) (finding that evidence should have been excluded pursuant to Rule 403, SCRE, but that any error resulting from the admission of the evidence was harmless). The State's case against the Appellant largely consisted of one witness, Edwin Middleton, who claimed to have observed the shooting. That one witness took close to two years to come forward with his account and was a convicted felon. See ROA p. 229, line 1-p. 230, line 17; Trial Tr. p. 330, line 1-p. 331, line 17. No forensic evidence tied the Appellant to the crime. Moreover, the jury was likely to disregard the Appellant's attorney's arguments and questions to the State's witnesses due to the evidence of the prior representation being admitted into evidence. A new trial is warranted.

CONCLUSION

The Appellant's conviction and sentence for murder should be vacated, and this matter should be remanded to the Charleston County Court of General Sessions for a new trial.

Respectfully submitted,

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This 3rd day of June, 2019.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Paul M. Burch, Circuit Court Judge

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ANTWON D. GOODWIN,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007, Order of the Supreme Court of South Carolina pertaining to the inclusion of personal data identifiers and other sensitive information in documents.

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This 3rd day of June, 2019.