STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMY WILLIAMS,

APPELLANT

APPELLATE CASE NO 2019-001445

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing Appellant's proposed *voir dire* designed to specifically determine if potential jurors could be fair and impartial with regards to an allegation of sexual assault of a sixteen-year old?

STATEMENT OF THE CASE

In February of 2017, the Horry County Grand Jury indicted Appellant, Jeremy Williams, for criminal sexual conduct first degree, armed robbery and burglary first degree, indictments #2017-GS-26-1102, 1103 and 1104. (R. p. 401-406). In August of 2017, the Horry County Grand Jury indicted Appellant for kidnapping, possession of a weapon during the commission of a violent crime and assault and battery first degree, indictments #2017-GS-26-3849, 3850, 3851. (R. p. 407-412). On August 19, 2019, Appellant proceeded to jury trial before the Honorable Michael G. Nettles. J. Eric Fox represented Appellant at trial. Mary-Ellen Walter and Leigh Andrews prosecuted the case. The jury returned verdicts of guilty on all counts. Judge Nettles sentenced Appellant to concurrent sentences of life without parole, pursuant to S.C. Code §17-25-45, for burglary first degree and kidnapping. Judge Nettles sentenced Appellant to thirty (30) years concurrent for criminal sexual conduct first degree, thirty (30) years concurrent for armed robbery, five (5) years concurrent for the weapons charge and ten (10) years concurrent for assault and battery first degree. A timely notice of intent to appeal was served on August 26, 2019. This appeal follows.

STANDARD OF REVIEW

"The scope of *voir dire* and the manner in which it is conducted are generally left to the sound discretion of the trial court. State v. Wise, 359 S.C. 14, 23, 596 S.E.2d 475, 479 (2004)." State v. Stanko, 376 S.C. 571, 575, 658 S.E.2d 94, 96 (2008).

ARGUMENT

The trial judge erred in refusing Appellant's proposed *voir dire* designed to specifically determine if potential jurors could be fair and impartial with regards to an allegation of sexual assault of a sixteen-year old.

This case involved allegations of a home invasion and sexual assault of a sixteen-year old girl [Minor]. Minor, her younger brother, Jaiveon B. and their cousin, Ja'Quan M. were home at the time of the incident. Minor and her brother testified that "String Bean" and two to three other men were involved. (R. p. 82, lines 24-25; p. 150, line 22 – p. 151, lines 1-25). An investigator with the Horry County Police Department testified that both boys identified "String Bean" as being involved and "street information" led the investigator to identify Appellant, Jeremy Williams, as "String Bean." (R. p. 277, lines 3-23). Samples from the sexual assault kit from Minor matched the buccal swab collected from Appellant. (R. p. 261, line 20 – p. 262, 263, lines 1-6). Appellant called his cousin, Steven Bellamy, as a witness and he testified that Appellant and Minor came to his house one day while he was outside doing yardwork and the two were alone together inside the house for a period of time. (R. p. 326, line 4 – p. 327, lines 1-20).

Prior to the selection of the jury but after the judge's general questioning the judge asked if there were any additional questions from the State or the defense. (R. p. 11, lines 17-19). Defense counsel answered, "Judge, I do have some proposed questions. I've given a copy to the solicitor, and I believe . . ." (R. p. 11, lines 20-22). The judge held a bench conference and then jury selection began. (R. p. 11, lines 23-25). After jury selection counsel for Appellant told the judge, "I proposed some voir dire questions. Some of them, Your Honor, did cover specifically – the questions – there are a number that you chose not to do in your discretion. We believe that all of them were relevant and important that we be able to have as much information as possible

to select a truly fair and impartial jury." (R. p. 22, lines 17-23). Counsel specifically sought to question jurors about sexual assault and sexual assault of a minor arguing that the general questions asked were not sufficient. (R. p. 22, line 23 – p. 23, p.24, lines 1-21). Trial counsel stated, "Again, I think Your Honor already had the written list that I requested, and I ask that that be made a part of the record." (R. p. 24, lines 19-21). Appellant's proposed *voir dire* was marked as Court's Exhibit #1. (R. p. 25, line 1, R. p. 419). The trial judge erred in refusing to ask the jurors questions designed to specifically determine if potential jurors could be fair and impartial with regards to an allegation of sexual assault of a sixteen- year old.

In the proposed *voir dire*, among other questions, Appellant sought to ask the jurors: 1.) In general, do you have the opinion that a person accused of sexually assaulting a minor is probably guilty?; and 2.) Many people have strong feelings about sexual assault. Do you have such feelings? (R. p. 419 Court's Exhibit #1, p. 2, questions 9 and 10). Prior to *voir dire* the prosecutor read the charges to the jury, including criminal sexual conduct in the first degree. (R. p. 6, lines 5-13). The judge asked the jury if any member of the panel had formed or expressed an opinion about the case or knew or heard anything about the case. (R. p. 9, lines 7-19). The judge asked the jury if any member of the panel had been the victim of a violent crime. (R. p. 10, lines 8-9). The judge, however, did not ask the jury if any member of the panel had opinions about sexual assault or sexual assault of a minor. Appellant was charged with criminal sexual conduct and not criminal sexual conduct with a minor because Minor was sixteen years old. The judge's questions failed to address whether potential jurors could be fair and impartial with regards to an allegation of sexual assault of a sixteen-year old.

S.C. Code §14-7-1020 provides that:

> The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any

> interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.

In Crosby v. Se. Zayre, Inc., 274 S.C. 519, 521–22, 265 S.E.2d 517, 519 (1980), the South Carolina Supreme Court wrote:

> While it has been held that, generally, the conduct of voir dire examinations of jurors is within the discretion of the court, State v. Gibbs, 267 S.C. 365, 228 S.E.2d 104 [1976], we have also held that, under the quoted statute [14-7-1020], the refusal to make any examination of prospective jurors to determine bias or prejudice on their part, when a timely request has been made, constitutes reversible error, State v. Brown, 240 S.C. 357, 126 S.E.2d 1[1962].

In the present case the trial judge abused his discretion in refusing to make any examination of the potential jurors to determine bias with regard to an allegation of sexual assault of a sixteen-year old. "All criminal defendants have the right to a trial by an impartial jury." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (citing U.S. Const. amends. VI and XIV). "To protect both parties' right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to 'elicit such facts as will enable [the parties] intelligently to exercise their right of peremptory challenge.' Woods, 345 S.C. at 587, 550 S.E.2d at 284." State v. Coaxum, 410 S.C. 320, 327, 764 S.E.2d 242, 245 (2014). The judge's refusal to ask potential jurors about bias with regard to an allegation of sexual assault of a sixteen-year old prevented Appellant from intelligently exercising peremptory challenges and deprived Appellant the right to an impartial jury. The error requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse Appellant's conviction and sentence and remand for a new trial.

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of April, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeremy Williams states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on August 19-21, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Jeremy Williams.

Respectfully Submitted,

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of April, 2020.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictments and sentencing sheets;
(2) Trial transcript pages 1-400;
(3) Court's Exhibit #1 – Defendant's Proposed Voir Dire.

I certify that this designation contains no matter which is irrelevant to this appeal.

April 27, 2020

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

April 27, 2020.

s/ Kathrine H. Hudgins

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