

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Sep 09 2020
SC Court of Appeals

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOP ROBERT LEE HAZLETT,

APPELLANT.

APPELLATE CASE NO. 2019-002108

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial court erred in allowing amendment of the indictments
immediately before jury selection.....4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

State v. Fonseca, 383 S.C. 640, 681 S.E.2d 1 (Ct. App. 2009)..... 6

State v. Nelson, ___ S.C. ___, ___ S.E.2d ___, Op. No. 5768, 2020 WL 4810093
(Ct. App. Aug. 19, 2020) 3

State v. Quarles, 261 S.C. 413, 200 S.E.2d 384 (1973)..... 6

Statutes

S.C. Code Ann. § 17-19-100..... 6

Other Authorities

S.C. Const. art. I, § 11..... 5

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing amendment of the indictments immediately before jury selection?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted appellant Jacop Hazlett on first-degree criminal sexual conduct (“CSC”) with a minor, three counts of third-degree CSC with a minor, and two counts of first-degree sexual exploitation of a minor. R. 57, l. 1 - 15. The court allowed the State to amend the indictments before the trial began. R. 13, l. 2 – 19. On December 10, 2019, appellant’s trial began before the Honorable Diane S. Goodstein and a jury. R. 1. Don Sorenson and Kelly LaPlante represented the State. R. 1. John Loy represented appellant. R. 1. The jury convicted appellant. R. 402, l. 10 – 404, l. 14. Judge Goodstein sentenced appellant to a mix of consecutive and concurrent sentences totaling seventy-five years’ imprisonment. R. 436, l. 4 – 438, l. 24. This appeal follows.

STANDARD OF REVIEW

The standard of review is abuse of discretion. See State v. Nelson, ___ S.C. ___, ___ S.E.2d ___, Op. No. 5768, 2020 WL 4810093 (Ct. App. Aug. 19, 2020) (stating standard of review for granting continuances).

ARGUMENT

The trial court erred in allowing amendment of the indictments immediately before jury selection.

Before jury selection began, the State announced its intention to go forward on only six indictments out of the “large number” that were returned against appellant. R. 5, l. 7 – 15. The solicitor only wanted to try allegations that arose from a single day, November 25, 2018. R. 5, l. 7 – 15. The State presented a church surveillance video that it claimed captured appellant performing sex acts on four children that day. R. 263, l. 17 – 264, l. 11. R. 300, l. 2 - 307, l. 3.

The solicitor told Judge Goodstein that three of the indictments “have the wrong dates on them as far as the incident date.” R. 6, l. 2 – 11. “November 18” needed to be changed on one indictment, “November 26” needed to be changed on another, and “September 30” needed to be changed on the most serious indictment, the first-degree criminal sexual conduct with a minor. R. 6, l. 7 – 7, l. 10.

The solicitor represented that he had spoken to defense counsel “over the last several weeks and kind of indicated to him our intentions.” R. 5, l. 7 – 15. He represented that defense counsel and appellant had been shown the video. R. 5, l. 16 – 25. The trial judge asked whether the video had a date stamp on it and the solicitor told the court it did. R. 7, l. 11 – 8, l. 11.

Defense counsel opposed the amendments, first pointing out that it was within the court’s discretion. R. 9, l. 17 – 13, l. 13. Defense counsel characterized the State’s actions as “cavalierly” treating the indictments on the morning of trial and that allowing the amendments would be “an abuse of the process.” R. 9, l. 17 – 13, l. 13. Appellant cited his right to have a grand jury consider the indictments and argued there was no reason the State could not have corrected the indictments in advance. R. 9, l. 17 – 13, l. 13.

The trial judge asked appellant to articulate how he would be prejudiced by the amendments. R. 10, l. 18 – 11, l. 12. Defense counsel responded that while the solicitor’s representations to the court about their communications were accurate, he never had possession of the videotapes or photographs the State sought to use because they portrayed minors in sexual situations. R. 11, l. 13 – 13, l. 1. Appellant agreed he had been given access to the materials. R. 11, l. 13 – 13, l. 1. Defense counsel could not predict the impact allowing the amendments would have and argued it would be “manifestly unfair.” R. 11, l. 13 – 13, l. 1. Finding no inability to prepare his defense, the trial judge allowed the amendments. R. 13, l. 2 – 19.

The trial court erred in allowing three of the indictments to be amended. The South Carolina Constitution provides:

No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide.

S.C. Const. art. I, § 11. The Legislature dictated how indictments could be amended as follows:

If (a) there be any defect in form in any indictments or (b) on the trial of any case there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof thereof, the court before which the trial shall be had may amend the indictment (according to the proof, if the amendment be because of a variance) **if such amendment does not change the nature of the offense charged.** After such amendment the trial shall proceed in all respects and with the same consequences as if the indictment had originally been returned as so amended, **unless such amendment shall operate as a surprise to the defendant,** in which case the defendant shall be entitled, upon demand, to a continuance of the cause.

S.C. Code Ann. § 17-19-100 (emphasis added). While the amendments did not change the nature of the offense charged, appellant indicated that the impact of the amendments was unpredictable and therefore demanded that those three charges be continued. R. 11, l. 13 – 13, l. 1.

The solicitor cited State v. Fonseca, 383 S.C. 640, 646, 681 S.E.2d 1, 4 (Ct. App. 2009), aff'd, 393 S.C. 229, 711 S.E.2d 906 (2011) and State v. Quarles, 261 S.C. 413, 416, 200 S.E.2d 384, 385 (1973), to support amendment of the indictment. Neither case is on point. Fonseca dealt with a duplicative indictment alleging two offenses. Fonseca at 645-46, 681 S.E.2d at 3-4. The time frames for both offenses were contained in the indictment, which the trial court severed. Id. Here, the new date was not alleged in the original indictment.

In Quarles, the indictment was amended from “September 4, 1972,” to “on or about September 4, 1972.” Quarles at 417, 200 S.E.2d at 386. Just like in this case, the date remained the same in the indictment. Id. Here, the date was changed and the original indictments, which were one of a “large number,” did not contain the original date.

The prejudice accrued from having to defend against six cases instead of three. The jury heard about three other sets of serious allegations. The cumulative effect of defending against so many allegations at one time deprived appellant of a fair trial. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse all of appellant's convictions and remand this case for a new trial.

This 9th day of September, 2020.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Sep 09 2020
SC Court of Appeals

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOP ROBERT LEE HAZLETT,

APPELLANT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jacop Robert Lee Hazlett states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Diane Schafer Goodstein, which was held on December 10 - 12, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Jacop Robert Lee Hazlett.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of September, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 09 2020

SC Court of Appeals

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOP ROBERT LEE HAZLETT,

APPELLANT.

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript dated December 10-12, 2019
- (2) Indictments
- (3) Sentence Sheets
- (4) State's Exhibit No. 2 (to be transported)

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

s/David Alexander
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

September 9, 2020

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.”

RECEIVED

Sep 09 2020

SC Court of Appeals

s/David Alexander
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

September 9, 2020.