STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CALHOUN COUNTY
Court of General Sessions
The Honorable Maité Murphy

Case No.: 2019-000926

State of South Carolina,

Respondent,

vs.

Derrick Tyler Mills,

Appellant.

APPELLANT'S REPLY TO INITIAL BRIEF OF RESPONDENT

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STATEMENTS OF ISSUES ON APPEAL

Appellant's Statement

The circuit court erred as a matter of law when it conducted any proceedings after declaring a mistrial, specifically in requiring jurors to return to the courtroom, reading a verdict form, and sentencing Appellant because it lacked jurisdiction once the trial ended.

Respondent's Statement

The trial judge did not prejudicially abuse her broad discretion or otherwise reversibly err by rescinding a mistrial granted on an inaccurate basis and by promptly reassembling the jurors for the purpose of receiving their previously-reached verdict because the jurors were successfully reassembled within only a few minutes of being mistakenly discharged, the jurors all unwaveringly confirmed they reached a unanimous verdict before the mistrial was granted, and nothing suggested the jurors were subjected to any improper external influences during the brief period that occurred between the granting of the mistrial and the jury's reassembly.

ARGUMENT

The circuit court erred as a matter of law when it conducted any proceedings after declaring a mistrial, specifically in requiring jurors to return to the courtroom, reading a verdict form, and sentencing Appellant because it lacked jurisdiction once the trial ended.

Respondent, in attempting to present a survey of cases from other jurisdictions, effectively proves Appellant's argument that, despite varying opinions across the United States, jurisdictions lean toward the idea that, once a jury has been excused, they cannot be reconvened. Essentially, Respondent puts forward three viewpoints: 1) a general rule against reassembly with a presumption that outside influence has occurred, and even a moment's outside contact is enough to prevent a jury from reassembling[1]; 2) a general rule against reassembly, but requiring a fact-specific inquiry about whether "any outside influence had been brought to bear upon the jury" after discharge[2]; and 3) general allowance of reassembly.[3]

In applying these cases to the facts at hand, Respondent also makes several important concessions. The first is that the grant of mistrial after Appellant's trial was proper. (IBOR, p.17, second paragraph) Respondent's logic for this point is that the jury sent notes to the trial judge on two occasions that they were hopelessly deadlocked, and the solicitor did not object to the grant of a mistrial. Respondent cited the idea of manifest necessity and that a mistrial was "seemingly mandated under the circumstances involved." (IBOR, p. 17 (citations omitted)) The second concession is that there is no South Carolina case law on point regarding jury reassembly. (IBOR, p.15, last paragraph) The most similar case cited by the State only "expressed concurrence with the reasoning" of a Fourth Circuit case that affirmed a verdict when jurors had been excused but had not dispersed.

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[1] Clark v. State, 97 S.W.2d 644, 170 Tenn. 494 (Tenn. 1936).
[2] Masters v. State, 344 So.2d 616 (Fla. App. 1977).
[3] Government of Virgin Islands v. Smith, 558 F.2d 691 (3rd Cir. 1977).

Should the court wish to create a method or rule regarding how to deal with similar cases, Appellant believes that it is impractical, as Respondent suggests, to question the jurors about whether they were safe yes by outside influence. Let it not be forgotten that the initial concern at Appellant's trial was whether the discovered verdict form was correct and the product of valid deliberations. Because the jury stated they were deadlocked and, after an Allen charge, confirmed they were still unable to reach a verdict, the discovery of such a form was confusing. (R. p. 458, lines 15-24; p. 460, lines 11-21) Reassembling the jury at this point seemed like a matter of verifying the verdict sheet, to which defense counsel strenuously objected. (R. p.460-462.) That is precisely why footnote 8 on page 20 of Respondent's brief, as well as any other criticism of why defense counsel did not inquire as to outside influence on the jurors, is a stretch of logic. Defense counsel deflects attention from the question of whether the jury should have been reconvened at all to criticize whether defense counsel certain performed inappropriately or ineffectively. This is not a post-conviction relief action and, as such, this consideration is misplaced. Defense counsel, without the benefit or guidance of case law, requested that the trial court, if it was determined to reconvene the jury, simply poll whether the jurors had, indeed, produced the verdict form found in the jury room. Defense counsel made perhaps the most common sensical statement at the time, which was "Good grief, if they had reached a verdict someone would have said something, should have said something, and it would be improper for the Court to draw that back." (R. p.462, lines 2-4)

Respondent goes so far as to aver "the trial judge recognized [ ] nothing appearing in the record suggests the jurors were subjected to external influences between the point they were discharged and the point they were reassembled just a few minutes later." (IBOR, p.18-19) Rather, the trial judge stated she "certainly can't imagine that [the bailiffs and security] would be coercive

towards a potential juror in this case, and I certainly don't have any indication that that had happened." (R. p.464, lines 14-17) Having jurors treated well as they were retrieved from all over the courthouse grounds is quite different than having jurors be free from outside influence. It is reasonable to believe, for example, that many jurors went to the bathroom upon release from duty, during which time they could have conversed with each other or anyone else. The broad spectrum of potential influence on a jury is a fact-intensive inquiry that needs no consideration in the case at bar. The jury was discharged and had disassembled, thus making it inappropriate for them to reconvene. In a similar attempt to distract from this fact, Respondent's implication that only a few minutes had passed between discharge and reassembly, when it was actually at least twenty minutes, undermines the reality of the situation.

Respondent argues that South Carolina should adopt an approach that allows liberal reassembly of jurors. To support this proposition, it notes that South Carolina does not require strict sequestration of jurors during trials or even once deliberations have begun. In one of the few South Carolina cases considering jury disassembly in any form, our Supreme Court held that a defendant had to show he or she was injured due to jury disassembly of the jury, at the time meaning during lunch hours or overnight. State v. Johnson, 159 S.C. 119, __, 155 S.E. 599, 600 (1930). Allowing these activities was already considered a relaxation and modification of the general rule of sequestration of jurors. However, Respondent does not note that two main parts of the juror's oath and repeated instruction during trial is not to deliberate unless in the jury room and not to discuss the case until it is over. Though we have relaxed our restrictions on jurors, a great deal of faith is placed in them, as well as continued instruction given to them. A decision rendered under these current circumstances is valid unless *prejudice* is shown to have resulted from a decision not to sequester. (IBOR, p. 16, citing State v. Evans, 309 S.C. 471, 476, 424 S.E.2d 512,

515 (Ct. App. 1992)) This leads Respondent to consider the issue of prejudice in detail, notably whether a defendant "must demonstrate prejudice from jury misconduct in order to be entitled to a new trial." State v. Kelly, 331 S.C. 132, 144, 502 S.E.2d 99, 105 (1998).

Though South Carolina's case law requires a showing of prejudice by a defendant in the appropriate circumstances, this is not a case of jury misconduct like those Respondent considers, as the jury behaved appropriately and in line with the trial court's instructions. It may be considered a case of jury *misunderstanding,* if one desires to name it, but there is nothing in the record to suggest wrongdoing, intentional or otherwise, on the part of the jury. Therefore, the line of cases cited by Respondent cannot and does not apply. Further, asking Appellant, or any other defendant to show prejudice in a case like this is laughable. After a mistrial, Appellant was potentially returning to life in the "real world" if he were out on bond but, after reassembling the jury, he went to prison for the rest of his life. The evidence of harm and prejudice is glaringly obvious. Though Appellant does not demand or expect "an error-free, perfect trial,"[4] he does demand that the error in his trial not cause him prejudice, particularly such prejudice that he will be incarcerated for the remainder of his natural life.

[4] IBOR, p. 22 (citing United States v. Hasting, 461 U.S. 499, 508-509 (1983) ("[T]here can be no such thing as an error-free, perfect trial, and . . . the Constitution does not guarantee such a trial.") (remainder of citation from brief omitted)).

CONCLUSION

For the above-stated reasons, Appellant respectfully requests that this Court reinstate the mistrial as initially granted.

Respectfully submitted,

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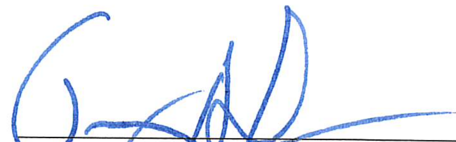
CERTFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

September 24, 2020



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