

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of General Sessions

The Honorable Perry M. Buckner, III

Case No.: 2019-001014

RECEIVED

Sep 30 2020

SC Court of Appeals

State of South Carolina,

Respondent,

vs.

Terek Rasheed Goodwin,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The circuit court erred as a matter of law when it overruled Appellant's objection to the fact that jury qualifications occurred outside of the presence of both defendant and defense counsel, as such absence violates Appellant's right to due process and a fair trial pursuant to the United States and South Carolina Constitutions, as well as laws and rules propounding this right.

STATEMENT OF THE CASE

On or about December 18, 2013, Appellant, Terek Rasheed Goodwin was arrested and later charged with armed robbery (2014-GS-18-0011), burglary in the first degree (-0012), and kidnapping (-0013) for incidents that occurred on December 9, 2013. Defendant proceeded to trial before the Honorable Perry M. Buckner, III (“trial judge” or “trial court”) and a jury at the Dorchester County Courthouse on June 10-12, 2019. Assistant Solicitors Michael T. Spears and George Smythe, Esquires, represented the State and Mr. Ashley Chisolm and John Kornegay, Esquires, of the First Circuit Public Defender’s Office represented the Defendant (“defense counsel”). As a result of trial, Appellant was found not guilty of armed robbery but guilty of the lesser-included charge of common law robbery; guilty of burglary in the first degree; and guilty of kidnapping.¹ Appellant was sentenced to thirty years for first-degree burglary, thirty years for kidnapping, and fifteen years for common law robbery, all to run concurrent and with credit for time served. Tr. p.398, line 12-p.399, line 5.

Appellant timely filed a notice of intent to appeal on June 20, 2019. This initial brief follows.

¹ It is seemingly incompatible to find a defendant guilty of first-degree burglary but not guilty of armed robbery, though guilty of common law robbery. The record reflects that the attorneys conferred and agreed that this can happen when a person that was not a participant in the crime is assaulted, thus satisfying the requirement in first-degree burglary. Presence of a deadly weapon is not required. Tr. p.396, line 20-p.397, line 6.

STATEMENT OF FACTS

These charges stem from the invasion of the home of Kevin and Monica Sauls in Dorchester County. Kevin Sauls received a substantial sum of money - \$20,000 – from an insurance settlement after a car accident. Rather than putting it in the bank, he and his wife showed the cash to some of Mr. Sauls’ coworkers on Friday, December 6, 2013. On Monday, December 9, 2013, three masked men with guns broke into the Sauls’ home, tied Mrs. Sauls up, and asked for the cash. In the process, they destroyed all communication devices, took whatever money they could find, and left. Mrs. Sauls left the house to find someone to assist her in calling for emergency services. The three men initially arrested as the perpetrators were all coworkers of Mr. Sauls. The cell phone records of one of these men, Junell Miles, led law enforcement to develop Appellant as a suspect due to use of slang terms that described committing a crime involving a lot of money.

At the call of the case, Judge Buckner stated, “We are not in our regular courtroom because Judge Murphy is going to qualify the jury, and my regular court reporter Becky Hill is already set up down there; so Eve’s going to be our court reporter for pretrial motions.” Tr. p.8, lines 1-5. Despite this brief announcement, defense counsel was not aware that qualifications would be happening at the exact same time as pretrial motions, thus presenting them from being present for both. Both Mr. Chisolm and Mr. Kornegay were in Judge Buckner’s courtroom for motions, leaving neither co-counsel present for the questioning of jurors regarding their basic demographic information. Importantly, Appellant was not present when the jury was qualified because he was also attending pre-trial motions.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus, on review, an appellate court is limited to determining whether the trial court abused its discretion. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002).

When reviewing a decision regarding the manner in which a criminal trial was conducted, an appellate court will not reverse the trial judge's decision unless it constituted a prejudicial abuse of discretion in light of the fact such decisions are ordinarily left largely to the sound discretion of the trial judge. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

The circuit court erred as a matter of law when it overruled Appellant's objection to the fact that jury qualifications occurred outside of the presence of both defendant and defense counsel, as such absence violates Appellant's right to due process and a fair trial pursuant to the United States and South Carolina Constitutions, as well as laws and rules propounding this right.

Both the United States and South Carolina Constitutions guarantee due process to any person that is subject to a proceeding that may deny them life, liberty, or property. U.S. Const. amend V; S.C. Const. art. I, §3. Similarly, both documents guarantee the right to speedy and public trials by impartial juries, with such a right to "be preserved inviolate." S.C. Const. art. I, §14; U.S. Const. Art. III; U.S. Const. amend VI. The procedure for qualifying a jury is codified in S.C. Code Ann. §14-7-1010:

The presiding judge shall at each term of court ascertain the qualifications of the jurors.

The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law. The clerk of court shall maintain a list of all jurors excused or disqualified and the reasons provided therefor by the presiding judge, which list must be signed by the presiding judge. In no case shall the jury commissioners excuse or disqualify any juror for any reason whatsoever; provided that the clerk of court may, without court approval, transfer any juror to a subsequent term upon good and sufficient cause.

South Carolina's Rules of Criminal Procedure contain Rule 14, Trial by Jury, of which section c reads: "Protection of Right. In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved."

Relatedly, a criminal defendant has a constitutional right to be present at trial. This is guaranteed by the Confrontation Clause of the Sixth Amendment to the United States Constitution and Section 14 of Article I of the South Carolina Constitution. This court has held that, "Apodictically, a criminal defendant has a constitutional right guaranteed by the Confrontation Clause of the Sixth Amendment to be present at trial." State v. Patterson, 367 S.C. 219, 625 S.E.2d

239 (Ct. App. 2006), See U.S. Const. amend. VI; Illinois v. Allen, 397 U.S. 337, 338, 90 S. Ct. 1057 (1970) ("One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial.")). Similarly, the Federal Rules of Criminal Procedure, Rule 43(a) provides an explicit right for a defendant to be present "at every stage of the trial including the impaneling of the jury." Fed.R.Crim.P.(43)(a).

As considered by the District of Columbia Circuit of the United States Court of Appeals, this rule was originally considered "a restatement of existing law" as it draws together the due process guarantees of the fifth, sixth, and fourteenth amendments, as well as the common law right of presence. U.S. v. Gordon, 829 F.2d 119, 264 U.S. App. D.C. 334 (D.C. Cir. 1987). This further draws on the right of a defendant to engage in his own defense. By being absent from jury qualifications, a defendant loses his right to evaluate jurors just as they would be evaluating him. The Gordon court considers that "what may be irrelevant when heard or seen by [defendant's] lawyer may tap a memory or association of the defendant's which in turn may be of some use to his defense." Gordon, 829 F.2d at 124, 264 U.S. App. D.C. at _____. (citing Boone v. United States, 483 A.2d 1135, 1137-38 (D.C.App.1984)). It continues to state that, "A defendant's presence at jury selection is also necessary so that he may effectively exercise his peremptory challenges." Id., (citing United States v. Washington, 705 F.2d 489, 497 (D.C.Cir.1983). Reaching back to Blackstone, the court reminds the reader that the fundamental importance of a jury trial was its fairness and inherent faith in the process: "How necessary it is that a prisoner ... should have a good opinion of his jury the want of which might totally disconcert him; the law wills not that he should be tried by any one man against whom he has conceived a prejudice even without being able to assign a reason for his dislike." Id., (citing 4 W. Blackstone, Commentaries *353, quoted in Lewis v. United States, 146 U.S. 370, 376, 13 S.Ct. 136, 138 (1982).

Distinctions and elaborations have been made regarding his right. For example, the Supreme Court of the United States considered a case regarding defendant presence and the rights just discussed in United States v. Gagnon, et al, 470 U.S. 522, 105 S.Ct. 1482 (1985), prior to the Gordon decision above. Mr. Gagnon was drawing sketches of courtroom figures, including a juror, while on trial with several co-defendants for their engagement in large-scale cocaine distribution. A juror was bothered by these sketches and conferences were had *in camera* with the juror and all defense attorneys, but without the defendants, who later argued their constitutional and Rule 43 rights were violated, as they did not waive their presence. The Court of Appeals agreed that there was no waiver of presence on the record; however, the Supreme Court held that these rights were not violated because “the mere occurrence of an *ex parte* conversation between a trial judge and a juror does not constitute a deprivation of any constitutional right. The defense has no constitutional right to be present at every interaction between a judge and a juror, nor is there a constitutional right to have a court reporter transcribe every such communication.” Id., citing Rushen v. Spain, 464 U.S. 114, 125-126, 104 S.Ct. 453, 459 (1983) (Stevens, J., concurring in judgment). It further held that no objection was made by any defendant, they never asserted their rights to attend this or other off the record conferences, and no post-trial motions were made. Id. This lack of reaction was determined to be a voluntary absence, as “a defendant knowing of such a discussion must assert whatever right he may have under Rule 43 to be present.” Id.

The Court of Appeals in Gordon also considered the issue of waiver. This case was peculiar because it dealt with defense counsel asking that a defendant be kept out of jury qualifications rather than the defendant making an affirmative request of his own volition. Gordon, 829 F.2d at 125. He argued that, because a defendant’s presence during jury selection is so vital, such a waiver should be made by the defendant and verified by the trial court, rather than via the representation

of a defense attorney. As with other major decisions during trial, “[w]here the defendant is in custody, ‘the serious and weighty responsibility’ of determining whether he wants to waive a constitutional right requires that he be brought before the court, advised of that right, and then permitted to make ‘an intelligent and competent waiver.’” Id., citing Cross v. United States, 325 F.2d 629, 631 (D.C.Cir.1963).

South Carolina has adopted the same logic, albeit not as directly as its federal counterparts. “The purpose of *voir dire* is to assess a juror's individual biases and overall fitness to serve on the jury—not to probe the need for expert testimony.” State v. Jones, 423 S.C. 631, 638, 817 S.E.2d 268, 271 (2018). The Jones court then cites several cases from other jurisdictions for the proposition that *voir dire* is a fundamental and constitutionally vital part of a jury trial.² Specifically regarding presence and waiver thereof, this court held that “[a]lthough a criminal defendant has a constitutional right to be present during court proceedings, the defendant has no absolute corresponding right to be absent. The precedent extant edifies that a defendant may waive his right to be present *in very limited scenarios*.” State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006)(emphasis added).

In the case *sub judice*, there is no waiver of Appellant’s right to be present during jury qualifications made by either himself or defense counsel. The trial court’s initial statement that

² “See, e.g., Mu'Min v. Virginia, 500 U.S. 415, 431, 111 S. Ct. 1899, 114 L. Ed. 2d 493 (1991) (“*Voir dire* examination serves the dual purpose of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.”); Rosales-Lopez v. United States, 451 U.S. 182, 188, 101 S. Ct. 1629, 68 L. Ed. 2d 22 (1981) (“*Voir dire* plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored.”); State v. Clark, 981 S.W.2d 143, 146 (Mo. 1998) (“The purpose of *voir dire* is to discover bias or prejudice in order to select a fair and impartial jury.”); State v. Green, 301 S.C. 347, 354, 392 S.E.2d 157, 161 (1990) (“The ultimate consideration is that the juror be unbiased, impartial and able to carry out the law as it is explained to him.”).” State v. Jones, 423 S.C. 631, 638, 817 S.E.2d 268, 271 (2018).

Judge Murphy was going to be doing jury qualifications did not include the imperative information that the same would be conducted simultaneously as pre-trial motions. Though representatives of the solicitor's and public defender's offices may have been present, they were not assigned to this case and could do little more than take notes. Critically, however, is the absence of Appellant and the vital insight and information he could bring to the process, not to mention his constitutional right to be present at every critical portion of his trial.

Perhaps more importantly, defense counsel objected to the lack of presence of any of the relevant players, including his client, during jury qualifications as they took place earlier that morning. Tr. p. 105, line 24 – p.106, line 21. The trial judge pushed back, saying that he felt everyone was aware and objections were waived before the proceedings started that morning. Appellant's objection, in light of the entire record, is in line with the federal cases considered above and the general jurisprudence that guarantees and requires the involvement of a defendant in every stage of a trial. There was no waiver, whether by silence or audibly and on the record, plus there was an objection on the record once it was clear what had transpired.

Regardless of the trial court's feelings on the matter, its failure to allow Appellant to be present during jury qualifications is a clear constitutional violation. The selection of a jury is one of the most fundamental parts of our justice system and is one in which every defendant has the clearly guaranteed right to participate. To conduct jury qualifications outside the presence of a defendant for any reason without a direct waiver is a clear contravention of the constitutional guarantees afforded to him, both per State and Federal constitutions. This error of law constitutes a clear abuse of discretion, and one that is so prejudicial as to call into question the validity of the result of this trial. Such fundamental deprivation can only be remedied by vacation of Appellant's convictions.

CONCLUSION

For the above stated reasons, this court must vacate Appellant's convictions.

Respectfully submitted,

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September 30, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

CASE NO.: 2019-001014

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SC Court of Appeals

State of South Carolina,Respondent.


vs.

Terek Goodwin #295362,.....Appellant,

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Appellant, does hereby certify that I emailed a copy of an Initial Brief of Appellant and Designation of Matter to:

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Jackie Miller

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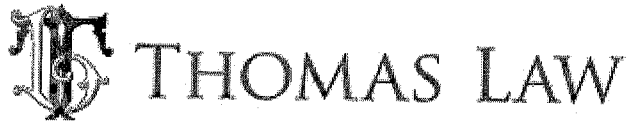
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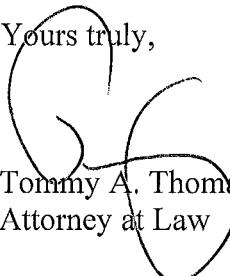
RE: State v. Terek Goodwin
Appellate Case No.: 2019-001014

Dear Ms. Allen:

Attached please find an Initial Brief of Appellant and a Designation of Matter along with a Certificate of Service by email.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

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cc: William M. Blich, Jr., Esq.
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