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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

HEYWARD LEGREE MARTIN,

PETITIONER

APPELLATE CASE NO 2017-000559

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

Opinion No. 2020-UP-272

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Heyward Legree Martin petitions the Court for rehearing and respectfully submits that this Court overlooked the fact that Dr. Lyle Eugene Fisher, the State's expert in pediatric critical care medicine, confirmed that it is difficult to determine when trauma actually occurred and, specifically in this case, gave law enforcement a range of within a day when the injuries could have occurred. (R. p. 121, lines 4 – 24). The trial judge erred in refusing to allow Petitioner and his son to testify that the day before the child was seen by Dr. Fisher, he was in the sole care of his mother in a bedroom in Petitioner's home where

the mother and child were living when both Petitioner and his son heard the child loudly crying, heard a loud bang or thud and then the child suddenly stopped crying. The testimony about the crying and the loud bang the day before, when the child was in the care of his mother, is inconsistent with Petitioner's guilt and raises a reasonable inference or presumption as to his own innocence. This testimony does far more than cast a bare suspicion on the guilt of the mother. The testimony establishes a connection between events that happened the day before and the hospitalization of the child the next day which points to the mother as the guilty party. The testimony should have been admitted so that the jury could decide who inflicted the injuries. The refusal to admit the testimony prevented Petitioner from presenting a complete defense. Petitioner respectfully seeks rehearing and reversal of the conviction.

Facts

In the spring of 2014, Melodi Tucker and her infant son were dropped off at the home of Petitioner, Heyward Martin, and his wife Melissa. (R. p. 197, lines 1-17). Heyward and Melissa Martin lived in the home with Melissa's two children, Kaitlynn and Jason who were approximately twelve and fourteen years of age. (R. p. 166, lines 2-13). Although Petitioner was not their biological father, the children considered him to be their father. (R. p. 166, lines 14-25). Melodi and her baby had no other place to go so the Martins took them in and allowed them to stay in their spare bedroom. (R. p. 167, lines 1-24). Melodi did not work. Melissa Martin worked at the Kangaroo Convenience Store and paid for the baby's diapers and formula. (R. p. 168, lines 3-20). Melissa also took Melodi to her drug classes three times a week at the Aiken Center. (R. p. 170, lines 11-22).

For most of the day on June 10, 2014, Melodi and the baby stayed in the spare bedroom at the Martin House. (R. p. 187, line 18 – p. 188, lines 1-4). Melodi had drug class that night but

Melissa was unable to take her because Melissa had to work. (R. p. 169, line 19 – p. 170, lines 1-10). Melodi had recently started dating Steven Tyler Hill and made arrangements for him to take her to drug class. (R. p. 38, line 4 – p. 39, 70 -72). Hill testified that he picked Melodi up from the Martin home at about 4:30 PM on June 10, 2014. (R. p. 39, line 12 – p. 40, lines 1-25). Melodi left the baby at the Martin home with Petitioner, and the two children.

Petitioner testified that when Melodi left he placed the baby in a swing and the baby went to sleep. (R. p. 199, lines 20-21). Once the baby was asleep, Petitioner moved him to the bed in Petitioner's room. (R. p. 199, line 20 – p. 200, lines 1-5). During this time the son, Jason, was in the living room playing Xbox. (R. p. 188, line 13 – p. 189, lines 1-7). The daughter, Kaitlynn, was also in the living room until she was sent to her room for being rude to her brother. (R. p. 181, lines 1-21). At trial Petitioner admitted telling police that he stayed in the bedroom with the baby when in fact he left the baby alone in the bedroom and went on the porch to smoke a cigarette and work on a lawnmower. (R. p. 200, lines 2 – p. 201, lines 1-12). At some point Jason heard a thump in the bedroom where the baby was sleeping and alerted Petitioner. (R. p. 190, lines 9-17). Petitioner checked on the baby and found him face down on the floor. (R. p. 201, line 24 – p. 202, lines 1-4). The baby was not crying but had a small cut on his chin. (R. p. 202, lines 5-16). Petitioner checked the baby out, later changed his diaper and fed him a quarter of a bottle. (R. p. 202, lines 13-25). About thirty minutes later Petitioner changed the baby's diaper again and noticed that the baby was stiffening up. (R. p. 202, line 25 – p. 203, lines 1-5). The baby's condition continued to deteriorate. Petitioner tried to call Melodi but was unable to reach her. (R. p. 204, line 25 – p. 205, lines 1-3). Petitioner admitted that he should have called 911. (R. p. 205, lines 9-15).

Meanwhile, Hill picked Melodi up from her drug class at about 8:30 PM. (R. p. 42, lines 20-22). Hill and Melodi stopped at a gas station and then went to Hill's cousin's house for about twenty to thirty minutes. (R. p. 43, lines 3-13). When Melodi and Hill returned to the Martin home, Petitioner advised them that the baby had been having seizures. (R. p. 44, line 21 – p. 45, lines 1-9). Hill and Melodi drove the baby to the hospital where he was diagnosed with bleeding on the brain and placed on life support. At the time of trial, the child was three years old and in the custody of his biological father, Branden Griffis. Melodi Tucker did not testify at trial.

Argument

Prior to trial the State moved to prohibit the Defense from introducing evidence of third-party guilt as it related to Melodi Tucker, the mother of the injured child. (R. pp. 16-21). The State specifically stated, "But what I would move in limine is to limit discussion by the defense, particularly in opening, of evidence of third party guilt." (R. p. 16, lines 15-17). Rather than making the proffer on third-party guilt evidence and obtaining a ruling on the issue prior to opening statements, defense counsel waited until after the State rested. In opening statement defense counsel told the jury, "We don't dispute the child suffered trauma. What we are disputing, however, is that my client is the one who inflicted it." (R. p. 33, lines 22-24).

When the proffer was finally made Petitioner testified that on Monday June 9, 2014, the day before the child was hospitalized, Melodi came home to the Martin house, where she was staying, at approximately 10:00 or 10:30 AM and immediately took the child back to her room. (R. p. 148, line 25 – p. 149, lines 1-15). Melodi spent Sunday night June 8, 2014, with her boyfriend of two weeks, Steven Tyler Hill. (R. p. 38, lines 4-7; p. 55, line 7 – p. 56, lines 1-23). She left her child with the Martins that Sunday night. (R. p. 56, lines 24 – p. 57, lines 1-21).

Petitioner testified that during the day of Monday June 9, 2014, "I heard a bunch of screaming. I mean, the baby was crying really, really loud. And then we heard – not only I, but my son and a friend of mine, Danny Young, Jr., heard a loud bang, wham, everything went silent simultaneously." (R. p. 149, lines 20-24). Petitioner testified that he heard this at approximately 4:00 PM. (R. p. 150, lines 6-8).

Additionally during the proffer Petitioner's son Jason Taylor testified that Melodi kept the child in her room during the day on June 9, 2014. (R. p. 154, lines 2-9). When asked if he heard the child cry, Jason testified, "Yes. She was crying – he was excessively and then all of a sudden there was a thud and it stopped." (R. p. 154, lines 10-14). Jason confirmed that both his dad and his dad's friend Danny heard what he heard. (R. p. 154, lines 15-17).

The judge refused to allow the proffered testimony stating:

> I deem that all to be within the third-party guilt umbrella and I will not allow it. Without any further connection -- I mean, you've made no further connection whatsoever, particularly with the enormity of these injuries, and if that happened -- the fact that you got a crying baby and a thump and then you got 24, perhaps even longer, passing and the child had these types of injuries, if that happened that far in advance, you'd have to have some testimony -- the child would be dead by the time she turned it over to the defendant.
>
> If it hadn't been for the intubation and immediate attention, the child's life was threatened any way by the time he got to the hospital. You just have not made any causal connection between crying and a thump and somebody else being responsible for this horrible injury. Respectfully denied.

(R. p. 162, line 10 – p. 163, lines 1-2). The trial judge erred.

Dr. Lyle Eugene Fisher treated the child at the hospital on June 10, 2014, and was qualified as an expert in pediatric critical care medicine at trial. (R. p. 88, lines 2-11). Dr. Fisher confirmed that he gave law enforcement a range of within a day as to when the child sustained the injuries. (R. p. 121, lines 14-24). The trial judge erred in refusing to allow testimony from

Petitioner and his son that they both heard the child crying loudly the day before, heard a loud thud or bang and then the crying stopped. When the crying and loud bang was heard the day before, the child was in the care of his mother, Melodi Tucker. On June 10, 2014, the child was in the care of his mother until 4:30 PM when she left for her drug class. The testimony from Petitioner and his son about what they heard on June 9, 2014, constitutes proper admissible third-party guilt evidence that the jury should have considered.

In State v. Swafford, 375 S.C. 637, 641, 654 S.E.2d 297, 299 (Ct. App. 2007), the South Carolina Court of Appeals wrote:

> South Carolina adopted the widely accepted rule regarding the admissibility of third-party guilt evidence in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). The rule states:
>
> [E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible ... [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.
> Gregory, 198 S.C. at 104-05, 16 S.E.2d at 534-35 (internal citations omitted).

In light of Dr. Fisher's time range of within a day, the testimony about the crying and the loud bang the day before, when the child was in the care of his mother, is inconsistent with Petitioner's guilt and raises a reasonable inference or presumption as to his own innocence. This testimony does far more than cast a bare suspicion on the guilt of Melodi, the mother. The testimony establishes a connection between events that happened the day before and the hospitalization of the child the next day which points to the mother as the guilty party.

In Holmes v. South Carolina, 547 U.S. 319, 324–25, 126 S. Ct. 1727, 1731, 164 L. Ed. 2d 503 (2006), the Court wrote:

> "[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." United States v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998); see also Crane v. Kentucky, 476 U.S. 683, 689–690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); Marshall v. Lonberger, 459 U.S. 422, 438, n. 6, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983); Chambers v. Mississippi, 410 U.S. 284, 302–303, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967). This latitude, however, has limits. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " Crane, supra, at 690, 106 S.Ct. 2142 (quoting California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); citations omitted).

The trial judge in the present case did not refuse to admit the third-party guilt evidence based on any purported strength of the State's evidence as in Holmes. Instead, the judge in the present case refused to admit the testimony about events the day before based on the erroneous finding that there was no connection between those events and the injuries to the child. Based on the evidence at trial, the jury could have found that the injuries to the child happened the day before when the child was in the care of his mother and not on the evening of June 10, 2014, when the child was in the care of Petitioner. By excluding the testimony the trial judge deprived Petitioner of his constitutional right to present a complete defense.

In affirming the conviction this Court wrote:

> Heyward Legree Martin, III appeals his conviction of inflicting great bodily injury on a child, arguing the trial court erred in refusing to allow testimony regarding third-party guilt. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); id. ("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. Holder, 382 S.C. 278, 288, 676 S.E.2d 690, 696 (2009) ("The admission or exclusion of testimonial evidence falls within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent abuse resulting in prejudice." (quoting State v. Brannon, 341 S.C. 271, 277, 533 S.E.2d 345, 348 (Ct. App. 2000))); State v. Burgess, 391 S.C. 15, 22, 703 S.E.2d 512, 516 (Ct. App. 2010) ("[T]he admissibility of evidence of

> third[-]party guilt is governed by the rule set forth in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941)."); Gregory, 198 S.C. at 104, 16 S.E.2d at 534 (providing for a defendant seeking to assert third-party guilt: "[T]he evidence offered by [the] accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible." (third alteration by court) (quoting 16 C.J. 560)); id. at 104-05, 16 S.E.2d at 535 ("But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty." (quoting 20 Am. Jur. 254)); Holmes v. South Carolina, 547 U.S. 319, 330 (2006) (characterizing the purpose of the Gregory rule as "to focus the trial on the central issues by excluding evidence that has only a very weak logical connection to the central issues"); State v. Brooks, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct. App. 2019) ("The Holmes court recognized that evidence of third-party guilt is appropriately managed by evidentiary rules such as Rule 403, SCRE."), cert. denied, S.C. Sup. Ct. Order filed Aug. 10, 2020; Rule 403, SCRE ("Although relevant, evidence may be excluded 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."); State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) ("A trial [court]'s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." (quoting State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003))); Brooks, 428 S.C. at 635, 837 S.E.2d at 245 ("The appellate court reviews the circuit court's Rule 403 ruling 'pursuant to the abuse of discretion standard and [is] obligated to give great deference to the [circuit] court's judgment.'" (alterations by court) (quoting Collins, 409 S.C. at 534, 763 S.E.2d at 28)).

Petitioner respectfully submits that this Court overlooked the time frame testimony from the State's expert. Additionally, the trial judge's decision was not based on a Rule 403 analysis. Based on the testimony that the trauma could have occurred within a day, the excluded testimony from Petitioner and his son provides a train of facts or circumstances tending clearly to point out

the mother as the guilty party. The trial judge erred in refusing to admit the testimony. The refusal to admit the testimony prevented Petitioner from presenting a complete defense. Petitioner respectfully seeks rehearing and a reversal of the conviction.

Respectfully Submitted,

KATHRINE H. HUDGINS
Appellate Defender

This 14th day of October, 2020.

STATE OF SOUTH CAROLINA

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PETITIONER

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case upon William F. Schumacher, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Heyward Legree Martin, #371562, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of October, 2020.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER