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Mar 05 2021

SC Court of Appeals

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

State of South Carolina,

Respondent,

vs.

Terek Rasheed Goodwin,

Appellant.

INITIAL REPLY BRIEF OF APPELLANT

TOMMY A. THOMAS8
Bar No.: 005536
Post Office Box 88
Irmo, SC 29063
(803) 732-5507

ATTORNEY FOR APPELLANT

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.

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.

Because it was expressly addressed by Respondent, Appellant wishes to affirmatively argue that this issue is preserved by appeal due to a timely argument by trial counsel. At the bottom of page 105 of the transcript, he argues that neither he nor his client were present when the jurors announced their occupations, spouse, and spouses' occupations. Tr. p.105, line 24 – p.106, line 5. Though he may have previously discussed the process of using two courtrooms in chambers earlier, he did not know or realize the ramifications of that system until back in the full courtroom, which is when he objected. Therefore, Appellant believes that the objection was timely.

Respondent argues jury qualification is merely administrative and, similarly, that Appellant's reliance on United States v. Gordon, 829 F.2d 119 (D.C. Cir. 1987) is misplaced as it is "entirely inapposite to this case...[and] his presence during voir dire and selection of the jury could make a difference and can be considered a critical stage." IBOR, p.9-10. Appellant's goal, however, was to analogize the importance of the steps in the process. Knowing the jurors' occupations and spouses may be as fundamental as their involvement with certain organizations that are typically discussed during voir dire. "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).

Though the defendant may be “but a shadow¹” at this stage in the process, the observations such a figure makes shape his consideration of the panel that will ultimately decide his fate. These observations combined with further observations and information gleaned through voir dire enable a defendant to be an informed participant in his own defense. Just as it is important for defense attorneys to be aware and involved during these portions of the process, so it is important for defendants to be present and involved.

Ultimately, this is a due process violation. Though other courts may have ruled that defendants’ presence is not critical in some stages of trials, particularly those we deem administrative, this is a prime example of how mere administration can be very influential. As argued above and in the initial brief, the mere presence of a defendant around potential jurors can chance their demeanor, attitude, and maybe even answers to questions. A defendant, and his attorneys, deserve the benefit of seeing exactly how jurors act in as many scenarios as possible. Just as if a defendant may assign his dislike without having a reason, he should be aware that a juror has assigned a dislike with or without a reason. This makes qualifications, where jurors reveal basic, personal information, just as important as voir dire. For the system to work, all players within it must have the utmost respect for and faith in its machinations.

Lastly, Respondent asks the court to consider a harmless error analysis, as is customary of constitutional violations. Specifically, it asks Appellant to point to a way in which he was prejudiced. The sad irony of this matter is that Appellant cannot point to potential prejudice because he is unable to know what he missed in jury qualifications. Though he and trial counsel may have received notes about names, ages, spouses, occupations, and criminal histories, they could not know if anyone was improperly excused or disqualified by the trial court because they

¹ IBOR, pp. 8 and 11 (quoting Snyder v. Massachusetts, 291 U.S. 97, 105-06 (1934)).

were not there. Appellant did not have the chance to see or evaluate the people who were scheduled to take part in the deciding of his fate. Respondent's harmless error analysis argument fails on that ground, as to require someone to prove something that is impossible for them to know or perceive cannot stand.

CONCLUSION

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

Respectfully submitted,

TOMMY A. THOMAS
Bar No.: 005536
Post Office Box 88
Irmo, SC 29063
(803) 732-5507

By:


Attorney for Appellant

7588 Woodrow Street
Irmo, South Carolina 29063

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In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

CASE NO.: 2019-001014

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 Reply Brief of Appellant to:

William M. Blicht, Jr., Esq.
Office of Appellate Defense
P.O. Box 11589
Columbia, SC 29211
wblitch@scag.gov



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
March 5, 2021

Jackie Miller

From: Jackie Miller
Sent: Friday, March 5, 2021 11:33 AM
To: William Blicht
Subject: Reply Brief Terek Goodwin
Attachments: goodwin.replybrief.pdf

Jackie Miller

Paralegal to Tommy Thomas, Esq.



THOMAS LAW

Tommy A. Thomas, PC

803 732 5507 Main | 803 781 4226 Fax

Mailing Post Office Box 88 | Irmo SC 29063

Physical 7588 Woodrow St | Irmo SC 29063

[Website](#)



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Via Email

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SC Court of Appeals

V. Clare Allen, Deputy Clerk
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P.O. Box 11629
Columbia, SC 29211

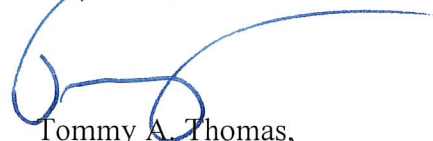
RE: State v. Terek Goodwin
Appellate Case No.: 2019-001014

Dear Ms. Allen:

Attached please find an Initial Reply Brief of Appellant and 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

TAT/jem
cc: William M. Blich, Jr., Esq.
Terek Goodwin

TOMMY A. THOMAS, P.C.

803 732 5507 | FAX 803 781 4226 | INMATE LINE 803 732 6542
HARRINGTON BUILDING, 7588 WOODROW STREET, IRMO, SC 29063
MAIL: P.O. BOX 88, IRMO, SC 29063