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Jun 17 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH RANDOLPH HENRY,

APPELLANT.

APPELLATE CASE NO. 2020-001404

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this murder case where the State's key witnesses who blamed appellant for the crime were caught on video hiding evidence after the victim's death, did the trial court err in refusing to allow appellant to cross-examine one of these witnesses about his prior conviction for giving false information to police?

STATEMENT OF THE CASE

In March 2020, a Lexington County grand jury indicted appellant for murder and a weapons charge. R. _____. On September 28, 2020, appellant was tried before the Honorable Frank R. Addy, Jr. and a jury. Tr. 1. L. Suzanne Mayes and Angela G. Martin represented the State. Tr. 1. David M. Mauldin and Robert M. Madsen represented appellant. Tr. 1. The jury convicted appellant. Tr. 709, l. 3 – 10. Judge Addy sentenced appellant to thirty-five years' imprisonment for murder and a consecutive five years' imprisonment on the weapons charge. Tr. 753, l. 24 – 754, l. 8. This appeal follows.

STANDARD OF REVIEW

The standard of review is abuse of discretion. State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015).

ARGUMENT

In this murder case where the State's key witnesses who blamed appellant for the crime were caught on video hiding evidence after the victim's death, the trial court erred in refusing to allow appellant to cross-examine one of these witnesses about his prior conviction for giving false information to police.

Factual Background

The police arrested Joseph Henry ("Henry") shortly after the shooting of Alexis Azarigian ("Azarigian") on the word of two supposed eyewitnesses. Tr. 215, l. 7 – 219, l. 16. Tr. 257, l. 9 – 21. The two eyewitnesses were drug addicts and hid evidence immediately after the shooting. Tr. 540, l. 2 – 541, l. 4. Tr. 605, l. 4 – 606, l. 16. State's Ex. 42. The police arrived at a church parking lot on Augusta Road in Lexington at 7:46AM and found Azarigian with a gunshot wound to the head sitting in the front passenger seat of her car. Tr. 169, l. 1 – 177, l. 17.

The two witnesses who blamed Henry for the shooting were Joshua Murray ("Murray") and Kaitlyn Skyrme ("Skyrme"). Tr. 553, l. 9 – 554, l. 17. Tr. 622, l. 9 – 623, l. 12. Murray and Skyrme said that the four of them, along with various other unknown persons, had been using drugs in the hours leading up to Azarigian being shot. Tr. 542, l. 21 – 548, l. 2. Tr. 611, l. 8 – 614, l. 11. Skyrme first met Azarigian during the encounter that led to her death. Tr. 613, l. 1 – 24. Skyrme had been "getting high" at a chop shop in Lexington and said Azarigian "was high as a kite" when she arrived at the chop shop with Murray. Tr. 611, l. 9 – 613, l. 15. Skyrme gave Azarigian a shot of methamphetamine. Tr. 613, l. 21 – 614, l. 11.

Skyrme was twenty-six years old at the time of trial and had been using drugs since she was "eleven, twelve." Tr. 605, l. 4 – 24. Even though she had used "Pretty much all of it" in her

life, in February 2019 she was mostly using heroin and meth. Tr. 606, l. 1 – 5. She wound up with the group through her connection to Mark “MJ” Hardaway. Tr. 605, l. 11 – 606, l. 16. She met Henry through Hardaway and knew Henry by the nickname “Pluto.” Tr. 606, l. 6 – 607, l. 2. She met Murray at the same time. Tr. 607, l. 13 – 23. Skyrme said she “was just kind of hanging out just meeting new people, I guess.” Tr. 606, l. 7 – 16.

The day before the shooting, the group was hanging out and went to a hotel to get high. Tr. 608, l. 1 – 609, l. 15. Skyrme said she saw Henry cleaning “a little black gun.” Tr. 608, l. 21 – 609, l. 15. Even though she said she was “a little intimidated” by it, she asked to hold the gun. Tr. 609, l. 2 – 15. When Henry finished cleaning the gun, he wrapped it up and put it in a bag. Tr. 609, l. 2 – 18. The police recovered a bag with a gun in it from the car where they arrested Henry shortly after the shooting. Tr. 284, l. 2 – 286, l. 16. Skyrme testified the gun recovered by the police “look[ed] like the same gun I held.” Tr. 609, l. 16 – 23. She also remembered the bag recovered by the police and described it as “a male purse.” Tr. 610, l. 8 – 19.

Skyrme, MJ, and Henry left the hotel because MJ had to go to work. Tr. 610, l. 23 – 611, l. 13. First they went to the chop shop in Lexington and dropped off Henry. Tr. 611, l. 8 – 13. After Skyrme and another person took MJ to work, they returned to the chop shop. Tr. 611, l. 9 – 22. Skyrme got high and described the place as a “hangout.” Tr. 611, l. 17 – 612, l. 18. Murray arrived at some point. Tr. 611, l. 14 – 613, l. 4. They picked up MJ from work and dropped Murray off at Wal-Mart. Tr. 612, l. 22 – 613, l. 4. Murray returned to the shop with Azarigian and she and Skyrme were introduced. Tr. 613, l. 3 – 20.

Skyrme, MJ, Murray, Azarigian, and Henry got into Azarigian’s car. Tr. 614, l. 2 – 615, l. 10. Azarigian floated the idea of going to a boat near her parents’ house in Chapin. Tr. 614, l. 2 – 615, l. 10. But on the way, they stopped at “somebody’s house and [Murray] said he had to

handle some business.” Tr. 614, l. 2 – 615, l. 10. Everyone but Murray stayed in the car. Tr. 614, l. 2 – 615, l. 10. They next went to the boat landing in Chapin and stayed until the sun came up. Tr. 615, l. 1 – 616, l. 19.

They left the boat landing and stopped at a gas station where Murray got behind the wheel. Tr. 616, l. 7 – 23. MJ was “acting real irate and like agitated” so the group dropped him off at the chop shop. Tr. 616, l. 20 – 617, l. 7. Henry was asleep and Skyrme was unsuccessful in waking him up. Tr. 616, l. 20 – 617, l. 7. When they left the garage, Murray drove, Azarigian was in the front passenger seat, Henry sat behind Murray, and Skyrme sat behind Azarigian. Tr. 617, l. 17 – 24.

The group decided to go shoplifting. Tr. 618, l. 8 – 19. Azarigian said a friend named Chad Andrews (“Andrews”) owed her money and they went to see him. Tr. 618, l. 8 – 619, l. 14. The group knew Andrews as a confidential informant for the police. Tr. 618, l. 8 – 619, l. 14. A police witness for the State confirmed that Andrews worked for the Lexington County Sheriff’s Department as a confidential informant. Tr. 592, l. 5 – 12. She said that Azarigian did not work as a confidential informant. Tr. 592, l. 13 – 15.

Azarigian wanted Andrews to go with them to shoplift, but the group said Andrews could not get into the car. Tr. 618, l. 8 – 619, l. 25. Skyrme claimed Henry and Azarigian began arguing about whether Azarigian’s friendship with Andrews also made her a snitch. Tr. 620, l. 1 – 20. Azarigian told Henry, “well then you better F’ing kill me.” Tr. 622, l. 1 – 5. The argument grew more heated and more profanities were exchanged. Tr. 622, l. 1 – 25.

Skyrme claimed that Henry then put his bag on his lap and she told him, “Don’t.” Tr. 623, l. 1 – 7. Henry “cut his eyes” at her to “shut [her] down.” Tr. 623, l. 1 – 5. Skyrme then

claimed that even though she “knew then what was gonna come,” she closed her eyes and “started to drift off to sleep.” Tr. 623, l. 1 – 12.

The “next thing” Skyrme heard was a “bam.” Tr. 623, l. 9 – 12. She opened her eyes and the car was “really smokey.” Tr. 623, l. 8 – 12. Skyrme told Henry, “You fucking shot her.” Tr. 623, l. 8 – 12. Henry supposedly replied, “You know who I am, you know what I do and I do what I say.” Tr. 623, l. 13 – 15. Henry then wrapped the gun in a black shirt. Tr. 624, l. 2 – 6. Murray pulled the car over into a church parking lot. Tr. 624, l. 22 – 625, l. 7. Henry got out of the car, talked and dapped with Murray, and then Henry “walked off all nonchalant.” Tr. 625, l. 2 – 7.

After Henry left, Skyrme claimed she told Murray “to give me what he had on him and I was gonna put it with my paraphernalia” before they flagged someone down. Tr. 625, l. 17 – 21. Skyrme had IV drug needles. Tr. 626, l. 20 – 627, l. 8. Murray had “either crack or meth” in a “large enough amount that me and him would both go to jail.” Tr. 627, l. 9 – 14. Murray earlier said it was seven grams of crack, which Skyrme agreed with defense counsel was “a substantial amount.” Tr. 646, l. 1 – 13. Skyrme hid their drugs in a bush. Tr. 627, l. 9 – 17. Murray admitted that later that night, after the police left, he went back to the scene and got the hidden items. Tr. 677, l. 2 – 4.

Neither of them had a working cell phone so they decided to flag down a passer-by. Tr. 625, l. 17 – 25. Jane Council was driving to work and stopped when she saw Murray “frantically” waving his arms. Tr. 150, l. 3 – 7. She looked in the car and saw Azarigian slumped over toward the dashboard. Tr. 152, l. 4 – 15. Council called 911. Tr. 152, l. 22 – 153, l. 3. The first officer on the scene arrived within approximately thirty seconds after the call came out from dispatch at 7:45AM. Tr. 167, l. 3 – 7.

Skyrme provided the officer with a description of Henry as a “black male wearing all gray with a gray beanie on” and told him the direction Henry traveled. Tr. 171, l. 11 – 20. They also told officers that Henry would be driving a small blue Toyota. Tr. 192, l. 12 – 16. The officers put this information out to other units on his radio. Tr. 171, l. 11 – 20. Tr. 192, l. 12 – 16.

A canine officer arrived and began walking down Augusta Road. Tr. 214, l. 8 – 215, l. 18. They saw a “suspect” which was Henry in a blue Toyota and stopped it. Tr. 215, l. 24 – 219, l. 16. MJ was also in the car when the police stopped it. Tr. 219, l. 8 – 17. The police arrested Henry. Tr. 257, l. 16 – 21.

Officer Pablo Carvajal “took charge” of Henry. Tr. 265, l. 22 – 24. Officer Carvajal noticed on Henry’s shirt “a brown stain to me that resembled blood.” Tr. 266, l. 9 – 16. The officers took photographs of the stain. Tr. 267, l. 7 – 19. When Henry was booked at the station, there was a hole in the shirt where the stain had been. Tr. 326, l. 1 – 328, l. 5. Under the driver’s seat of the Toyota, the police found a bag with a gun wrapped in a black hoodie. Tr. 284, l. 2 – 285, l. 24.

MJ testified that after leaving Chapin, they dropped him off at the garage. Tr. 397, l. 2 – 14. MJ described Murray and Azarigian as “acting strange” and that was why he asked to be dropped off. Tr. 407, l. 19 – 408, l. 19. Henry later called MJ and told him he was coming to pick him up. Tr. 399, l. 19 – 21. Henry did not say anything about a shooting. Tr. 400, l. 13 – 24. MJ had earlier discussed going to Hilton Head after he got his tax return and Henry brought up the idea of that trip. Tr. 400, l. 13 – 401, l. 16. When asked about Henry’s demeanor, MJ said, “Honestly, he was normal kind of. Normal kind of.” Tr. 401, l. 19 – 21. MJ recognized the bag and said Henry used it to carry his gun. Tr. 404, l. 21 – 405, l. 10.

Murray admitted he was a drug addict, to “methamphetamine mainly.” Tr. 540, l. 14 – 541, l. 4. He met Azarigian a month before the shooting. Tr. 541, l. 10 – 24. They used meth together. Tr. 541, l. 19 – 24. Murray said he had known Henry for two or three years. Tr. 542, l. 2 – 9.

Murray said Henry took him to the chop shop and that it was “more of a party scene than an actual working environment.” Tr. 544, l. 13 – 545, l. 9. Azarigian picked Murray up at the garage and they went to Wal-Mart. Tr. 545, l. 20 – 547, l. 9. They then went back to the garage and then out to Chapin. Tr. 547, l. 2 – 9. They used drugs. Tr. 548, l. 1 – 2. Azarigian and Murray sat and talked on the dock while everyone else stayed in the car. Tr. 548, l. 3 – 17.

Murray drove back into town because he “was the most sober.” Tr. 548, l. 18 – 549, l. 5. They dropped MJ off at the garage. Tr. 550, l. 12 – 14. Azarigian told Murray to stop to see Andrews because Andrews owed her eighty dollars. Tr. 548, l. 18 – 549, l. 5. Murray described Andrews as having a bad reputation “in the lifestyle” because he was “police affiliated.” Tr. 548, l. 18 – 549, l. 5.

When they pulled up to Andrews, he tried to get in the car. Tr. 548, l. 18 – 549, l. 5. Murray testified that he and Henry had “an issue with it because we just don’t want to associate like that. I mean, it just don’t look good. You know, in the lifestyle it does not look good.” Tr. 548, l. 18 – 549, l. 5. Murray said Andrews would wear a police badge and “bully people out of their money and drugs and stuff like that by threatening them with police retaliation.” Tr. 552, l. 3 – 9.

Murray said when they left, they were going back to Henry’s car and then Azarigian could leave “and pick up Chad Andrews and they can do whatever they want to do---“. Tr. 570, l. 1 – 15. Henry and Azarigian began “screaming at each other.” Tr. 553, l. 9 – 554, l. 17.

Azarigian threw a napkin at Henry then Murray saw Henry pull up a pistol and then a flash. Tr. 553, l. 9 – 554, l. 17.

Murray pulled over to the side of the road. Tr. 554, l. 6 – 17. The police obtained surveillance video from the business across the street. State's Ex. 42. Henry gets out of the backseat and then leans into the car. State's Ex. 42. When he gets out of the car completely, so does Murray. State's Ex. 42. Strangely, Murray and Henry hug. State's Ex. 42. Murray had obviously seen the video in preparation for trial and tried to explain his strange behavior towards someone who had just shot a friend in the back of the head, saying, "According to the video, I reach out and I hugged him, but I'm guessing that's—I don't know if it was instincts or what, I was just trying to pacify the situation." Tr. 554, l. 6 – 17.

Henry walks off. State's Ex. 42. He does not run and walks at a normal pace. State's Ex. 42. Skyrme gets out of the car and walks to Murray. State's Ex. 42. Skyrme and Murray walk behind the car and talk. State's Ex. 42. Skyrme walks away and Murray begins waving at cars. State's Ex. 42. Murray said on direct-examination that they decided to hide the drugs before getting help for Azarigian. Tr. 558, l. 23 – 560, l. 15. Contradicting Skyrme's testimony about the seven grams of crack, Murray said he gave Skyrme meth to hide for him. Tr. 575, l. 6 – 20. On redirect, the solicitor tried to get Murray to say the meth he handed Skyrme looked like crack cocaine and Murray said they were "Similar." Tr. 579, l. 21 -580, l. 6. Murray also testified, just like Skyrme, that Henry said, "I am who I say I am and I do what I say I'm gonna do," but admitted he told the police at the time that Henry said, "I'm not lying about what I am." Tr. 581, l. 5 – 14.

Discussion

At the end of Murray's direct examination, the solicitor asked him about two assault and battery convictions from 2012 and 2015. Tr. 565, l. 16 – 21. Murray also admitted to a drug charge from 2017. Tr. 565, l. 19 – 566, l. 2. After Murray finished testifying and the jury was excused, Judge Addy placed a prior objection and ruling on the record concerning Murray's criminal convictions. Tr. 582, l. 16 – 585, l. 11. Appellant sought to impeach Murray with a 2006 conviction for giving false information to police. Tr. 582, l. 16 – 585, l. 11. The court did not allow the impeachment. Tr. 582, l. 16 – 585, l. 11. Judge Addy said the facts of the conviction were that Murray borrowed his cousin's birth certificate for going to the DMV and getting a fake ID. Tr. 582, l. 16 – 585, l. 11. He ruled "that based on the specific facts of the false information charge that wasn't a situation where in my mind he was giving false information of a substantive or a serious—or a crime and trying to mislead the police in some substantive way." Tr. 582, l. 16 – 585, l. 11.

Defense counsel countered that he had seen no incident report regarding the conviction. Tr. 582, l. 16 – 585, l. 11. He argued that the information provided to the court came from Murray and "could be very self-serving." Tr. 582, l. 16 – 585, l. 11. Because of the importance of the credibility of Murray, the defense argued it was crucial to use the conviction for impeachment. Tr. 582, l. 16 – 585, l. 11.

The solicitor then admitted she did not research the conviction and "did get the information strictly from Mr. Murray." Tr. 582, l. 16 – 585, l. 11. Judge Addy cited Rule 609 and said the defense had only informed the State that morning of its intent to use the conviction for impeachment and perhaps limited the State's investigation, "but it is what it is and my ruling

stands.” Tr. 582, l. 16 – 585, l. 11. The court found the impeachment value was not substantial and “way too remote.” Tr. 582, l. 16 – 585, l. 11.

The trial judge erred in refusing to allow appellant to impeach the State’s star witness with a crime of dishonesty. Rule 609(a)(2) states that “evidence that any witness has been convicted of a crime shall be admitted if it involved if it involved dishonesty **or false statement**, regardless of the punishment.” Rule 609(a)(2), SCRE (emphasis added). Even though Rule 609(a)(2) envisions automatic admissibility of crimes of dishonesty and false statements, remote convictions are subject to a balancing test under Rule 609(b). See State v. Robinson, 426 S.C. 579, 594-95, 828 S.E.2d 203, 211 (2019). The balancing test to be used contains five factors and comes from State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). Id. Those five factors are: (1) impeachment value of the prior crime; (2) the point in time of the conviction and the witness’s subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the witness’s testimony; and (5) the centrality of the credibility issue. Id.

The trial court did not conduct a Colf analysis. The court erroneously focused on the fact that a conviction a mere four years outside of the ten-year limit was “way too remote.” Tr. 585, l. 6 – 11. Under the Colf analysis, Murray’s statement should have been admitted. First, the impeachment value of the crime was extremely high. Murray was convicted of lying to the police and his statements to the police immediately after the crime blaming Henry were critical in shifting suspicion away from himself. The conviction was not for a crime of dishonesty that included a false statement as one of its elements; it was for giving false statements itself.

The second and third Colf factors also weigh heavily in favor of admission. The conviction for false statement was only four years outside of the ten-year limit. Murray’s subsequent history does not show any subsequent transformation into a law-abiding citizen. He

had two other convictions for assault and battery. He had another drug conviction. He admitted to using illegal drugs. He also admitted to hiding evidence and tampering with the scene of the shooting. Hiding evidence and tampering with the scene is exactly the same as giving a false statement to the police. But for the surveillance video, Murray and Skyrme likely never would have admitted to hiding evidence. Murray's intent to deceive the police remained unchanged from 2006 to the day of the shooting.

The fourth and fifth Colf factors also weigh heavily in favor of admission. Murray's testimony was vital to the State's case. He claimed to see Henry shoot Azarigian in the head. He was the driver of the car and a potential suspect in the crime. The jury saw him and Skyrme on video collaborate to hide something from the police. It was essential that the jury believe his testimony to convict Henry. The trial court erred in refusing to allow the jury to hear that Murray had a previous conviction devastating to his credibility.

The State will likely argue that the error in this case is harmless. The specific error affected Murray's credibility which is central to the case. See Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (holding, in a PCR case where state asserted overwhelming evidence of guilt, that the error complained of must be analyzed for its specific impact). Furthermore, the investigation in this case was sloppy and consisted of a rush to judgment by the police as to Henry's guilt.

The police conducted no gunshot residue testing of Murray, Skyrme, or Henry. Tr. 593, l. 9 – 595, l. 14. Incredibly, the police did no gunshot residue testing of the gun to see if it had been recently fired. Tr. 318, l. 1 – 319, l. 5. They did not check for gunshot residue on the clothing in which the gun was wrapped. Tr. 319, l. 9 – 14. There were no scorch marks on the clothing that held the gun. Tr. 319, l. 19 – 320, l. 4.

No shell casing was found. Tr. 320, l. 23 – 321, l. 10. The gun found with Henry was a semiautomatic. Tr. 320, l. 16 – 22. Murray was allowed to change his clothing on his own without police observation. Tr. 313, l. 14 – 314, l. 14. No one collected Murray and Skyrme’s cell phones. Tr. 315, l. 20 – 22. The police could not determine the caliber of the bullet from the projectile recovered at autopsy and could not definitively match it to the gun discovered with Henry. Tr. 502, l. 8 – 513, l. 25. As shown on the video, Henry did not run from the scene and despite having a car, was still close by at the garage when the police arrested him. Skyrme testified that Azarigian and Andrews went behind a dumpster and out of sight, but Henry was asleep when this happened. Tr. 641, l. 5 – 642, l. 20. Murray had seven grams of crack cocaine and saw Azarigian’s encounter with Andrews. Finally, at sentencing, the trial judge stated, “Were there problems with the State’s case? Yes. Could it have been stronger? Perhaps.” Tr. 753, 3 – 10. The error in this case cannot be harmless and this Court should reverse.

CONCLUSION

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

s/David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

This 17th day of June, 2021.

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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 Initial Brief of Appellant and Designation of Matter in the above-referenced case have been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 17th day of June, 2021.

s/David Alexander
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