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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Number 2018-002148

THE STATE,.....RESPONDENT

v.

ROY GENE SUTHERLAND, III,.....APPELLANT

Opinion No. 2021-UP-180 (S.C. Ct. App. Filed May 19, 2021)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General
S.C. Bar No. 65282

BARRY J. BARNETTE,
Solicitor, Seventh Judicial Circuit

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR THE RESPONDENT

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STATEMENT OF QUESTION PRESENTED

- I. The Court of Appeals correctly found that family friend William Lawrence Ashcraft's statement that he was a church deacon and Sunday school teacher of the victim's sister did not have any bearing on the impartiality of the jury in light of the fact that this statement did not concern the victim and the victim's sister was never called to testify.

STATEMENT OF THE CASE

On March 2018, a Spartanburg County Grand Jury returned an indictment against Roy Gene Sutherland, III (Sutherland) for the offenses of murder and possession of a weapon during the commission of a violent crime. (Indictment No. 18-GS-42-1409). On November 26, 2018, the case was called to trial before the Honorable J. Derham Cole. Present before the trial court representing the state of South Carolina was Seventh Circuit Solicitor Barry J. Barnette, representing Sutherland were attorneys Suzanne H. White and Paul K. Neely. During voir dire Mr. William Lawrence Ashcraft stated he was the victim's sisters Sunday school teacher and church deacon.

The trial lasted a total of four days, at its conclusion a jury of his peers found Sutherland guilty on both counts. Sutherland was then sentenced to a period of incarceration for the remainder of his natural life for the offense of murder, and five years for possession of a weapon during the commission of a violent crime. Pursuant to South Carolina law a life sentence for the offense of murder did not allow for the possibility of parole. While serving his sentence Sutherland filed a timely notice of appeal before the South Carolina Court of Appeals.

On May 19, 2021, the South Carolina Court of Appeals issued an unpublished opinion affirming the decision of the trial court. *State v. Sutherland*, 2021 WL 1997469. The Court of Appeals decided that since Mr. Ashcraft's statement did not have any direct relationship to the victim, and the victim's sister was never called to testify, trial court did not err in not removing the jury panel and replacing it with a new panel. Within their opinion the Court of Appeals decided that Sutherland was not harmed nor prejudiced by Mr. Ashcraft's statement.

Sutherland now files this petition for writ of certiorari. He argues that the Court of Appeals erred in affirming the decision of the trial court. Respondent argues that Sutherland has failed to

reveal how he was prejudiced or how the statement of Mr. Ashcraft influenced the jury against him. The State would respectfully request this Court to dismiss this petition.

STANDARD OF REVIEW

In criminal cases the appellate court sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827 (2001). The general rule of this state is that the conduct of a criminal trial is left largely to the sound discretion of the presiding judge and this court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. *State v. Bridges*, 278 S.C. 447, 298 S.E.2d 212 (1982). A trial court is given enormous discretion in conducting a criminal trial. *State v. Bryant*, 372 S.C. 305, 642 S.E.2d 582, 587 (2007). The scope of voir dire and the manner in which it is conducted are generally left to the sound discretion of the trial court. *State v. Bixby*, 388 S.C. 528, 542 S.E.2d 579 (2010), quoting, *State v. Stanko*, 376 S.C. 571, 575, 658 S.E.2d 94, 96 (2008). The rulings of a trial judge on matters within his discretion will generally not be reversed absent an abuse of discretion. *State v. Matthews*, 291 S.C. 339, 342, 353 S.E.2d 444, 447 (1986). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 537, 787 S.E.2d 485, 495 (2016).

ARGUMENT

- I. **The Court of Appeals correctly found that the Circuit Court did not err in refusing to excuse the jury panel and replacing them with a new panel due to comments made by a family friend of the victim during voir dire regarding him being the victim's sister's Sunday school teacher and church deacon.**

Sutherland currently requests this court to grant certiorari in order to review the decision of the Court of Appeals affirming the decision of the trial court. The State argues that Sutherland has not presented a sufficient cause for this case to be reviewed by this Honorable Court. This petition for certiorari should be subject to dismissal.

The South Carolina Appellate Court rules specifically state:

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- 1) Where there are novel questions of law.
- 2) Where there is a dissent in the decision of the Court of Appeals.
- 3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- 4) Where substantial constitutional issues are directly involved.
- 5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b)(1-5)SCACR

In reviewing this petition and reasons for this request, no sufficient bases for the granting of certiorari exist. There exists no novel questions of law; there was no dissent by any presiding member of the Court of Appeals; there exists no conflict with this decision and any previous decision made by this Court; although Sutherland does argue he was denied due process, he has failed to present any substantial constitutional reasons to support this argument; and, there exists no Court of Appeals decision in conflict with a decision made by the United States Supreme Court.

In impaneling juries in criminal cases, the jurors must be called, sworn and impaneled anew for the trial of each case, according to the established practice. S.C. Code Ann. §14-7-1100 (2020). To that end the circuit court “must conduct voir dire of the prospective jurors to determine whether the jurors are aware of any bias or prejudice against a party, as well as to ‘elicit such facts as will enable [the parties] intelligently to exercise their right of preemptory challenge.’” *State v. Coaxum*, 410 S.C. 320, 327, 764 S.E.2d 242, 245, quoting, *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). It is important that anyone that might have bias to either the victim or defendant be found prior to that juror being seated. Pursuant to South Carolina law, the circuit court may conduct an inquiry to determine whether a potential juror “is related to either party, had any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein.” S.C. Code Ann. §14-7-1020 (2020). The only way to do this is through voir dire.

Sutherland argues that the trial court erred in how voir dire was conducted. It is his opinion that the Court should not have allowed family and friends of the victim to be able to personally address the jury panel. Sutherland argues that the trial court allowing family and friends to personally address the jury panel deprived him of his right to a fair trial with impartial and indifferent jurors. There is no set rule on how voir dire is to be conducted. The scope and the manner in which it is conducted is generally left to the sound discretion of the trial judge. *State v. Wise*, 359 S.C. 14, 23, 596 S.E.2d 479 (2004). Nothing in the record reveals that jurors were impartial due to Mr. Ashcraft’s statements. These potential jurors had to hear from friends and family members, either through the trial judge, or from the friends or family members themselves. Hearing from these individuals allows potential jurors to reveal if any relationship existed with any of these people. If attorneys can be made aware of any relationship, preemptive strikes can be used if necessary.

Sutherland is of the opinion that since Mr. Ashcraft mentioned he was a deacon and Sunday school teacher, it created a personal appeal to the jury panel, revealing that the victim was a good person. It was clear from the record that the victim himself was not a member of that church. If he was, Mr. Ashcraft would have said so. Mr. Ashcraft clearly stated he is, “one of her Sunday school teachers, a deacon in the church.” (R. p. 15 l. 21-22) Mr. Ashcraft’s statement had nothing to do with the victim himself. There is no way this statement raised opinions regarding the victim’s character. It was made to inform the jury of his connection to this case. He just informed the panel of his relationship to the victim’s sister as her Sunday school teacher and church deacon. This statement in no way swayed the jury to the victim’s side. As stated within the States final brief “nearly everyone in South Carolina is related to someone who attends a place of higher worship.”

The victim’s character was only minor as it relates to this case. The State did not need the jury to have any sympathy for the victim in order to receive a conviction. There was clearly ample evidence that Sutherland committed this crime beyond a reasonable doubt. This was not a self-defense case where the victim’s conduct can be relevant. The State proved its case by introducing multiple videos putting Sutherland in the U-Haul where blood that matched the victim’s DNA was found on the passenger side door. The victim’s blood was also found on a pair of shoes worn by Sutherland. Sutherland also had multiple knives in his possession that were consistent with the stab wounds of the victim. Nothing was brought forth by Sutherland revealing that Mr. Ashcraft’s mentioning being a Sunday school teacher and church deacon had any impact on the jury’s verdict.

Sutherland made an accusation that Mr. Ashcraft made a personal appeal to the jury which is disallowed pursuant to Rule 22 of the South Carolina Rules of Criminal Procedure.¹ This rule

¹ In arguing before a jury, no attorney shall address or refer to by name or otherwise any member of the jury he is addressing, or otherwise make any personal appeal to any or all members of the jury. Rule 22 S.C.R.Crim.P.

applies to attorneys, not lay people introducing themselves to a jury panel during voir dire. However, even if this rule did apply, what Mr. Ashcraft stated does not fall under this rule. This rule specifically states that the jury should not be referred to by name or no personal appeal made. This was not the jury only a panel where the jury was going to be eventually chosen from. Mr. Ashcraft never made reference to any panel member by name, nor did he ever make any type of personal plea in order to gain sympathy. He just informed the panel that he was involved by being the Sunday school teacher of the victim's sister. This was in no way done in order to raise the emotions of the jury, this is an obvious by the reading of the record. Mr. Ashcraft only spoke because the trial judge wanted him to introduce himself during voir dire. This was done in order for the court and the parties involved to know if any member of the panel knew him personally, and if this relationship would sway a juror for or against either party involved.

Sutherland also argues that this case should be compared to this Court's decision in *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998). In *Kelly*, a juror shared a pro-death penalty pamphlet prior to closing arguments in the guilt phase of a death penalty trial. In *Kelly*, this Court decided:

“Juror's misconduct in sharing pro-death penalty pamphlet with other jurors after all testimony had been introduced in penalty phase of capital murder trial, but before closing arguments, did not violate defendant's right to fair trial by panel of impartial and indifferent jurors; because, pamphlet dealt with capital punishment, it could not have influenced that juror during guilt phase, trial judge removed that juror and replaced her with alternate, three other jurors who admitted seeing pamphlet could not recall any of its contents or whether it expressed view on capital punishment, and those jurors indicated that their exposure to pamphlet would not interfere with their ability to render fair and impartial verdict.” *Id.*

Within his petition Sutherland argues that “comments made to the jury panel by the friend and family members are extraneous material received by the jury panel, like the extraneous pamphlet received by the jury in *Kelly*, that constitute improper outside influence in violation of the Sixth

Amendment right to a fair trial by an impartial jury.” There is no comparison between the present case and *Kelly*.

In *Kelly*, an actual juror passed around a pro-death penalty religious pamphlet during a death penalty trial. Mr. Ashcraft telling the jury panel that he was the victim’s sister Sunday school teacher is not comparable. The only reason a juror would bring in a pro-death penalty pamphlet during a death penalty trial is to make an attempt to sway the jury into giving a defendant the death penalty. In *Kelly*, the jury was already sworn, there was no other reason for this juror to bring in this pamphlet than an attempt at persuasion. In the case at bar there was a reason for Mr. Ashcraft to address the jury panel. During voir dire it is necessary for each person present in the courtroom per order of the trial court to address the jury panel so everyone would be aware of any relationship with a potential juror. Mr. Ashcraft just informed the jury of who he was, nothing in his statement in any way could be thought to be an attempt to influence. There is nothing within the record that would reveal that the jury was influenced in any way by the statements of Mr. Ashcraft.

This case involved an isolated comment made by a friend of the family in relation to him teaching Sunday school to the victim’s sister. The record contains no evidence that the jury considered the comment of Mr. Ashcraft, it did not sway their decision in any way. The evidence in the record was so overwhelming it supports the jury verdict. It was obvious that the statement of Mr. Ashcraft had no impact on the jury whatsoever.

The Court of Appeals examined the right of a defendant to have an impartial jury. That examination resulted in the Court of Appeals deciding that the impact of Mr. Ashcraft statement had no effect on final verdict. Mr. Ashcraft’s statement was not related to the victim, he stated he was a Sunday school teacher and deacon of the church where the victim’s sister attended not the victim himself. The Court of Appeals also decided that since the victim’s sister was never called

as a witness this statement had minimal if any impact on the final verdict. The decision of the Court of Appeals was correct.

This decision does not apply to the criteria that this court may consider when granting certiorari. Sutherland's arguments are not sufficient in order for this court to grant certiorari, this petition should be subject to dismissal.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the
Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General
S.C. Bar No. 65282

By: s/ Tommy Evans, Jr.
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

Columbia, South Carolina
September 1, 2021.