

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Honorable Maite Murphy, Circuit Court Judge

Appellate Case No. 2018-000989

THE STATE,RESPONDENT,

v.

TRAVIS LATRELL LAWRENCE,APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial judge properly allowed a sheriff's deputy to testify regarding a traffic stop of Appellant's co-defendant because said testimony corroborated Victim's testimony and it created no danger of unfair prejudice to Appellant.
- II. The trial judge properly allowed Appellant's co-defendant to assert his Fifth Amendment privilege against self-incrimination because Appellant, if forced to testify, would have exposed himself to criminal liability for the charged crime and an additional one for attempting to purchase marijuana.

STATEMENT OF THE CASE

On February 2, 2017, the Dorchester County Grand Jury indicted Appellant for attempted murder, armed robbery, and possession of a firearm by persons unlawful. On May 21–23, 2018, Appellant proceeded to a jury trial before the Honorable Maite Murphy. Michelle Williams, Esquire, and John Loy, Esquire, represented Appellant; assistant solicitors Ryan Templeton, Esquire, and Mike Spears, Esquire, represented the State. The jury acquitted Appellant of armed robbery and unlawful possession of a weapon, but found him guilty of attempted murder. The trial judge sentenced Appellant to thirty years' incarceration.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Clayton Baxter (Victim), at the time of the crime, lived with a roommate in a townhouse. He worked "off and on" and also received Social Security payments every month. When he obtained the cash from these checks, he would hide it around his home. (R.p.11, line 18–R.p.15, line 4).

On July 2, 2016, Appellant was contacted by Terrell Bennett (Codefendant), who was not a blood relative of his but was treated as a member of his family. Codefendant claimed he needed to borrow money, so Appellant agreed to the favor and invited him to his home. Codefendant arrived in a gold Cadillac DeVille, and called Victim to let him know he had arrived. Further, Codefendant asked Victim whether he was alone in the house at that time. Victim informed Codefendant he was alone, and offered to meet him at the door. As Codefendant entered the home, Victim noticed a pair of feet behind Codefendant, moving slowly. When Victim questioned Codefendant about who was with him, Codefendant moved to the side and Victim saw Appellant pointing a gun at him. Victim recognized Appellant because he had met him "[m]aybe six or seven times" prior, but had never had any major interactions with him and "no issues, no problems," no altercations. (R.p.15, line 5–R.p.19, line 3).

Victim noticed Appellant was holding a revolver while Appellant demanded Victim "[g]ive [him] [his] money." Victim waited for Appellant to become distracted and stop aiming the gun at him, which occurred when Appellant tried to search his pockets. Victim used the opportunity to grab Appellant's hand, pick him up, and slam him on top of a nearby table. At this point, a three-way struggle erupted among the men. As they struggled, the gun went off and fired a round into the upstairs room. Eventually, Appellant went into the kitchen and retrieved a knife. He then sliced Victim across the face, followed by several stabs to Victim's head and

upper back. Victim, weakened by the attack, lost his hold on the gun. Codefendant gained control of the gun and told Victim not to move. Appellant and Codefendant quickly escaped. Victim then grabbed a towel to try and slow down his bleeding while he called 9-1-1. (R.p.19, line 7–R.p.25, line 6).

Appellant told officers Appellant and Codefendant attacked him. A few days after the attack, he provided officers with a written statement describing the events of that night. Later, Victim identified Appellant in a photo lineup as the person who stabbed him. (R.p.25, line 16–R.p.34, line 14).

Detective Brandon Byrd of the Dorchester County Sheriff's Office was one of the first officers on the scene. Detective Byrd photographed the crime scene, including the upstairs spare bedroom. There, Detective Byrd discovered "a bedside table with a hole coming out of the top" which appeared to match holes in the ceiling he saw from the first floor of the home. Using dowel rods, he determined the holes were created by a bullet fired from the floor below. Notably no firearms, ammunition, or firearm paraphernalia were located in the house. Further, the weapon used to stab Victim was not located in the home. (R.p.73, line 4–R.p.90, line 8).

The State offered the testimony of Dorchester County Sheriff's Deputy Jordan Williamson to confirm that Codefendant did, in fact, drive a gold Cadillac. Specifically, Deputy Williamson testified he initiated a "simple traffic stop" with Codefendant in April 2016, at which point he was driving a gold Cadillac DeVille with the license plate number LLN163. (R.p.124, line 12–R.p.125, line 12).

Trial counsel objected to the testimony, claiming it "invite[d] speculation on the jury's part as to the nature of this prior law enforcement contact" with Codefendant, who was not on trial. Trial counsel believed the testimony was unnecessary because whether Codefendant drove

a gold Cadillac was not an issue in the case. The State disagreed, noting Deputy Williamson's testimony corroborated Victim's, noted he would only testify that a traffic stop occurred, omitting any reference to the reason for such a stop. The trial judge, noting the reason for the stop would not be provided to the jury and that the testimony would corroborate Victim's testimony, found the testimony's probative value outweighed its prejudicial effect and overruled the objection. (R.p.119, line 4–R.p.122, line 5).

Trial counsel attempted to call Codefendant as a witness at trial, but Codefendant asserted his Fifth Amendment right against self-incrimination. The trial judge questioned Codefendant in the presence of his counsel, but outside the presence of the parties. After instruction Codefendant on this Fifth Amendment rights, Codefendant volunteered the following information: (1) early into the police investigation into the case, he volunteered to meet with the Solicitor's Office and discuss the case; (2) no agreement or promises regarding Codefendant's prosecution were made by the State; (3) Appellant and Codefendant went to Victim's house the night of the attack looking to purchase marijuana, but Victim "flip[ed] out" when he saw Appellant and attacked him first. The trial judge noted Appellant's testimony was that he "basically [acted in] self-defense" but that he admitted he was there to buy marijuana and that Codefendant's testimony put him at the scene of the crime. Codefendant admitted he had no idea where the weapons used were and that he and Appellant did not receive any serious injuries from the fight. (R.p.126, line 21–R.p.142, line 14).

Codefendant's counsel supported Codefendant's assertion of his Fifth Amendment privilege, noting his testimony could bolster Appellant's defense but that it also placed Codefendant "in a position where he's giving information that could potentially be used against him." (R.p.142, line 15–R.p.143, line 23).

The parties then returned to the courtroom, where the trial judge questioned Investigator Melendez, who had sat in on Codefendant's meeting with the Solicitor's Office, as to whether Codefendant's comments were incriminating in nature. Investigator Melendez noted Codefendant was not forthcoming and originally only really admitted he was at the house the night of the attack. The initial meeting "ended abruptly" and without Codefendant providing any information relating to self-defense. At a second meeting, Codefendant claimed the purpose of his trip to Victim's home was to borrow money. However "some sort of an incident occurred" and a struggle erupted over the gun, during which he able to grab hold of the gun with the "barrel . . . somewhat in his grip," and while holding the gun it went off and burned his hand; Codefendant showed investigators the burn during the meeting. Further, Codefendant told investigators that Appellant eventually obtained a knife and began stabbing Victim. The second meeting ended because Codefendant could not provide any additional information, such as what happened to the weapons used in the attack and skipped other "pertinent parts of what happened." Investigator Melendez did not believe the statements he heard from Codefendant supported a finding of self-defense. (R.p.145, line 18–R.p.152, line 16).

After questioning Investigator Melendez, trial counsel noted that, "at th[at] point, you know, [she] really d[id]n't know what [Codefendant was] going to say," noting he was "a wild card" for the defense. (R.p.153, line 20–R.p.156, line 1).

After considering Codefendant's statements and Melendez's testimony, the trial judge found Codefendant's testimony created a "hazard of incrimination" for him and determined he could invoke his right against self-incrimination. (R.p.158, line 24–R.p.159, line 20).

STANDARD OF REVIEW

“In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous.” State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). “The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id.

ARGUMENT

I.

The trial judge properly allowed a sheriff's deputy to testify regarding a traffic stop of Appellant's co-defendant because said testimony corroborated Victim's testimony and it created no danger of unfair prejudice to Appellant.

As a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000); Rule 402, SCRE. Evidence that assists the jury in arriving at the truth of an issue is relevant and admissible unless otherwise incompetent. State v. Sweat, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004). Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In the Matter of Care and Treatment of Corley, 353 S.C. 202, 205, 577 S.E.2d 451, 453 (2003); State v. King, 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002); Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). It is not required that the inference sought should necessarily follow from the fact proved. See Sweat, 362 S.C. at 127, 606 S.E.2d at 513. Indeed, evidence is relevant if “logically relevant” to establish a material fact or element of the crime; it need not be “necessary” to the State’s case in order to be admitted. Id. (citing State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990)).

“Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness. Evidence is admissible to corroborate the testimony of a previous witness, and whether it in fact corroborates the witness' testimony is a question for the jury.” State v. Stroman, 281 S.C. 508, 510, 316 S.E.2d 395, 397 (1984) (internal citations omitted). Such evidence includes identifying information about a defendant. See State v. Day, 341 S.C. 410, 422, 535 S.E.2d 431, 437 (2000) (“Evidence concerning a defendant’s tattoo or

nickname is not prejudicial when used to prove something at issue in a trial, such as the identification of the defendant.”).

The State was entitled to introduce evidence to properly bolster the eyewitness identifications made by Victim. Victim testified Appellant and Codefendant arrived at his home in a gold Cadillac; Deputy Williamson confirmed that Codefendant owned and drove such a vehicle. See Stroman, 281 S.C. 508, 510, 316 S.E.2d 395, 397 (1984). Establishing Victim’s truthfulness and credibility was critical for the State because Victim’s testimony and identification of Appellant and Codefendant were the crux of the State’s case. Trial counsel focused his defense of Appellant by impugning the credibility and character of Victim, putting into the record Victim’s prior drug offenses and the fact hundreds of dollars were found by officers in his home.

Further, the information introduced was not even prejudicial to Codefendant, much less Appellant. Deputy Williamson only testified that he encountered Codefendant during a traffic stop and did not testify as to what caused it. Traffic stops occur for a number of reasons: speeding, expired tags, broken tail lights, and several others which do may involve minimal or no criminal behavior. In no way, shape, or form does such testimony pertain to or impact Appellant. Appellant’s convictions should be affirmed.

II.

The trial judge properly allowed Appellant's co-defendant to assert his Fifth Amendment privilege against self-incrimination because Appellant, if forced to testify, would have exposed himself to criminal liability for the charged crime and an additional one for attempting to purchase marijuana.

No person "shall be compelled in any criminal case to be a witness against himself."

U.S. Const, amend V.¹ "The essence of this basic constitutional principle is the requirement that the state which proposes to convict and punish an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips." Estelle v. Smith, 451 U.S. 454, 462 (1981); see also Kastisar v. United States, 406 U.S. 441, 444 (1972) (explaining the privilege "reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty"). The privilege is "accorded liberal construction in favor of the right it was intended to secure," and may be claimed when a witness "has reasonable cause to apprehend danger from a direct answer."

Hoffman v. United States, 341 U.S. 479, 486 (1951). "The settled law provides that the privilege extends not only to answers that would themselves support a criminal conviction, but also to answers furnishing a link in the chain of evidence needed to prosecute an individual."

Grosshuesch v. Cramer, 377 S.C. 12, 659 S.E.2d 112 (2008) (citing Hoffman, 341 U.S. at 486); see also Maness v. Mavers, 419 U.S. 449, 461 (1975); United States v. Pardo, 636 F.2d 535, 544 (D.C. Cir. 1980) (explaining that "a witness does not lose his Fifth Amendment right to refuse to testify concerning other matters or transactions not included in his conviction or plea arrangement").

"The privilege against self-incrimination, one of our most cherished fundamental rights,

¹ The South Carolina Constitution also provides for protection against compelled self-incrimination. S.C. Const, art. I, § 12.

is jealously guarded by the courts." North River Ins. Co., Inc. v. Stefanou, 831 F.2d 484, 486 (4th Cir. 1987). Examining the validity of the assertion of the privilege, the Sixth Circuit held a valid assertion "exists where a witness has reasonable cause to apprehend a real danger of incrimination." In re Morganroth, 718 F.2d 161, 167 (6th Cir. 1983). "While the privilege is to be accorded liberal application, the court may order a witness to answer if it clearly appears that he is mistaken as to the justification for the privilege in advancing his claim as a subterfuge." Id. (emphasis added).

For a court to "overrule the claim of privilege, it must be [p]erfectly clear from a careful consideration of all the circumstances, that the witness is mistaken in the apprehension of self-incrimination and the answers demanded [c]annot possibly have such tendency." Commonwealth v. Carrera, 227 A.2d 627, 629 (Pa. 1967). "[I]f the witness, upon interposing his claim, were required to prove the hazard [of self-incrimination] in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee." Hoffman, 341 U.S. at 486.

In Grosshuesch, the Supreme Court of South Carolina applied the Fourth Circuit's² test for invocation of the privilege against self-incrimination: (1) determining whether the information is incriminating in nature; and (2) evaluating whether there is a sufficient possibility of criminal prosecution to trigger the privilege. Id. at 23, 659 S.E.2d at 117. The Supreme Court acknowledged "at least two categories of potentially incriminating questions": those whose incriminating nature "is evident on the question's face in light of the question asked and the surrounding circumstances," and "questions which thought not overtly incriminating, can be shown to be incriminating through further contextual proof." Id. at 23, 659 S.E.2d at 117-18. It

² See United States v. Sharp, 920 F.2d 1167, 1170-71 (4th Cir. 1990).

is the trial court's duty to question parties invoking the right for enough information as to discern whether the questions posed by the requesting party require answers by the responding party which would violate its privilege against self-incrimination. Id. at 25–28, 659 S.E.2d at 119–20.

Applying these standards to Grossheusch, the court found that requiring the defendants to respond to discovery responses pertaining to the amount of and use of assets, when the management of those same assets was the subject of a criminal prosecution, was a violation of their Fifth Amendment privilege against self-incrimination. It specifically noted that even though the defendants asserted that they acted appropriately:

[T]he question when judging the application of the privilege against self-incrimination does not revolve around what defenses a party has asserted . . . but whether there is a reasonable possibility that requiring a party to answer a certain question would provide information that could be used against the party in a criminal proceeding or would lead to the discovery of such information.

Id. at 24, 659 S.E.2d at 118. Thus, the court found “it appeared probable that the [defendants] could have a reasonable fear that their answers to questions focused on this information would ultimately be used against them in the pending criminal proceeding.” Id. at 25, 659 S.E.2d at 119.

In the instant case, the trial judge did not abuse his discretion in finding that forcing Codefendant to testify would violate the latter's Fifth Amendment privilege against self-incrimination. Appellant argues that because Codefendant claimed he did not admit to committing a crime while visiting Victim's home. However, whether a party maintains his or her innocence of a crime is irrelevant to such a determination; in Grossheusch, the court specifically noted that the privilege against self-incrimination is not concerned with “ what defenses a party has asserted . . . but whether there is a reasonable probability that requiring a party to answer a certain question would provide information that could be used against the party

in a criminal proceeding or [] lead to the discovery of such information.” Id. at 24, 659 S.E.2d at 118. Requiring Appellant to testify, even if he maintains his innocence of the crimes, would likely provide the State with information which could be used at his trial.

First and foremost, the State notes that any testimony provided by Codefendant at Appellant’s trial could be used against him during his own trial, regardless of whether he decides to testify. See Rule 801(d)(2)(A), SCRE (noting a statement offered against a party, which is the party’s own statement, is not considered hearsay). The very existence of such statements could pressure Codefendant to testify at his own trial just to try and refute these statements. Further, even if codefendant generally denies committing a crime, information he provides in his testimony could still be used in his future trial, notably, (1) Codefendant admits to being at the scene of the incident and his testimony in this case would be uncontestable proof establishing his presence during the crime; and (2) the gun and knife involved in the crime were never recovered by police, and testimony regarding those items could lead to their discovery, as well as the discovery of other potential evidence, and use against him at trial. See Grosshuesch, 377 S.C. at 12, 659 S.E.2d at 112.

In addition to providing evidence which could be used against Codefendant for his charged crimes, his testimony could also lead to new charges for other crimes. Codefendant claimed he went over to Victim’s house for the explicit purpose of purchasing drugs. Appellant argues Codefendant’s testimony failed to provide enough evidence that Codefendant committed an overt act in furtherance of the attempted drug crime. However, the State notes that Codefendant going to Victim’s home could, in itself, be considered an overt act towards attempting to purchase the marijuana. Further, Appellant appears to argue that Codefendant needed to provide specific testimony providing details of criminal behavior before the trial judge

could determine Codefendant was entitled to his privilege against self-incrimination, but fails to recognize that a defendant need only present enough information that a judge may determine a "reasonable possibility" exists that a party may provide information which may be used against him in a criminal proceeding; a party need not provide the exact information with which he would incriminate himself. See Grossheusch, 377 S.C. at 24, 659 S.E.2d at 118. If Codefendant had provided such information, it is likely the State would be able to obtain said information and use it in his prosecution; at the very least, Codefendant would provide testimony to which he would be bound; providing testimony specifically explaining how he attempted to purchase illegal drugs would provide the State with the specific information it needs to charge and prosecute him for that very crime, regardless of whether any of that evidence is in the State's possession. Such an approach would virtually guarantee the conviction of codefendants seeking to invoke their privilege against self-incrimination.

Accordingly, the trial judge did not err, or abuse his discretion, in finding Codefendant properly invoked his privilege against self-incrimination.

CONCLUSION

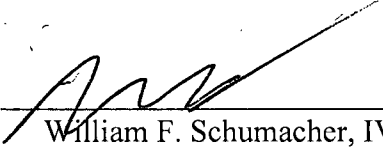
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

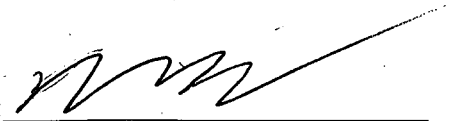
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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