Rel: March 12, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-14-0753

Sherman Collins

v.

State of Alabama

Appeal from Sumter Circuit Court
(CC-12-109)

On Application for Rehearing

PER CURIAM.

Sherman Collins was convicted of capital murder for the intentional killing of Detrick Bell for pecuniary gain, a violation of § 13A-5-40(a)(7),

Ala. Code 1975, and conspiracy to commit murder, a violation of § 13A-4-3, Ala. Code 1975. The jury recommended, by a vote of 10 to 2, that Collins be sentenced to death for his capital-murder conviction. The trial court followed that recommendation. The trial court also sentenced Collins to 120 months' imprisonment for his conspiracy conviction.

In our opinion on original submission, this Court affirmed Collins's convictions and his 120-month sentence. But this Court remanded Collins's case to the trial court for that court "to correct its sentencing order to make specific findings of facts as required by § 13A-5-47(d), Ala. Code 1975," as to Collins's death sentence. Collins v. State, [Ms. CR-14-0753, Oct. 3, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017) ("Collins I"). Ultimately, the trial court complied with our instructions, and we affirmed Collins's death sentence. Collins v. State, [Ms. CR-14-0753, Oct. 25, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019) (opinion on return to second remand). Collins has now filed an application for rehearing with this Court, asking "this Court to reconsider its decision in this case and reverse his convictions and death sentence." (Collins's application, p. 89.)

Although none of Collins's arguments in his application warrant granting him relief, Collins correctly points out that this Court did not address his argument about the trial court's denial of his motion to strike for cause potential juror R.C. (Collins's application, p. 63.) Specifically, Collins argues in his application for rehearing that, although this Court addressed his arguments as to veniremembers T.T., Ke.S., Ka.S., T.D., and N.J., this Court "overlooked the erroneous denial of defense counsel's challenge for cause of R.C." (Collins's application, p. 67.) Thus, we address his argument as to potential juror R.C.

In his brief on original submission, Collins argued that, because "[p]otential juror R.C. sua sponte offered during voir dire that he had retained [Nathan] Watkins [an assistant district attorney] for legal services," the trial court should have granted his motion to strike R.C. for cause.

As we explained in our opinion on original submission,

> " 'To justify a challenge for cause, there must be a proper statutory ground or " 'some matter which imports absolute bias or favor, and leaves nothing to the discretion of the trial court.' " Clark v. State, 621 So. 2d 309, 321 (Ala. Cr. App. 1992)

> (quoting Nettles v. State, 435 So. 2d 146, 149 (Ala. Cr. App. 1983)). This court has held that "once a juror indicates initially that he or she is biased or prejudiced or has deep seated impressions" about a case, the juror should be removed for cause. Knop v. McCain, 561 So. 2d 229, 234 (Ala. 1989). The test to be applied in determining whether a juror should be removed for cause is whether the juror can eliminate the influence of his previous feelings and render a verdict according to the evidence and the law. Ex parte Taylor, 666 So. 2d 73, 82 (Ala. 1995). A juror "need not be excused merely because [the juror] knows something of the case to be tried or because [the juror] has formed some opinions regarding it." Kinder v. State, 515 So. 2d 55, 61 (Ala. Cr. App. 1986).'

"Ex parte Davis, 718 So. 2d 1166, 1171-72 (Ala. 1998).

> " 'The test for determining whether a strike rises to the level of a challenge for cause is "whether a juror can set aside their opinions and try the case fairly and impartially, according to the law and the evidence." Marshall v. State, 598 So. 2d 14, 16 (Ala. Cr. App. 1991). "Broad discretion is vested with the trial court in determining whether or not to sustain challenges for cause." Ex parte Nettles, 435 So. 2d 151, 153 (Ala. 1983). "The decision of the trial court 'on such questions is entitled to great weight and will not be interfered with unless clearly erroneous, equivalent to an abuse of discretion.' " Nettles, 435 So. 2d at 153.'

"Dunning v. State, 659 So. 2d 995, 997 (Ala. Crim. App. 1994).

> " 'A trial judge is in a decidedly better position than an appellate court to assess the credibility of the jurors during voir dire questioning. See Ford v. State, 628 So. 2d 1068 (Ala. Crim. App. 1993). For that reason, we give great deference to a trial judge's ruling on challenges for cause. Baker v. State, 906 So. 2d 210 (Ala. Crim. App. 2001).'
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> "Turner v. State, 924 So. 2d 737, 754 (Ala. Crim. App. 2002).
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> "Moreover, most of [the] challenged jurors were removed by the use of peremptory strikes. '[T]he Alabama Supreme Court has held that the failure to remove a juror for cause is harmless when that juror is removed by the use of a peremptory strike. Bethea v. Springhill Mem'l Hosp., 833 So. 2d 1 (Ala. 2002).' Pace v. State, 904 So. 2d 331, 341 (Ala. Crim. App. 2003). Cf. Ex parte Colby, 41 So. 3d 1 (Ala. 2009) (may not be harmless when multiple challenges for cause are involved)."

Collins I, ___ So. 3d at ___.

During voir dire, Collins's counsel asked whether any veniremembers had "any business dealings with anyone in the District Attorney's Office." In response, R.C. said, "I have a question. Is this Mr. Watkins the same one that was with Pruitt, Pruitt and Watkins? I dealt with Mr. Watkins." (R. 146.) Later, Collins moved to strike R.C. for cause, arguing that R.C. "indicated a relationship with Mr. Watkins." (R. 225.) Watkins responded, "[R.C.] said when I was with Pruitt, Pruitt and

Watkins that I had done some legal work for him. I really don't have any recollection of it. That was prior to 2002." (R. 225.) The trial court denied Collins's motion.

As we held on original submission concerning Watkins's prior legal work for potential jurors T.T., Ke.S. and Ka.S., " '[i]n the absence of a statute so providing, a venireperson is not absolutely disqualified because he has been a client of an attorney for one of the parties.' " Collins I, ___ So. 3d at ___ (quoting State v. Douglas, 132 S.W. 3d 251, 258 (Mo. App. 2004)). When that business relationship is not ongoing and when the record does not suggest bias in favor of the attorney who represented the veniremember, the trial court does not err in denying a motion to strike that veniremember for cause. Collins I, ___ So. 3d at ___.

Here, although it appears that Watkins had done legal work for R.C., Watkins explained that he had no recollection of the work and that the business relationship had terminated about 12 years before Collins's trial. Nothing in the record reflects that the assistant district attorney (Watkins) was currently doing any legal work for R.C., and nothing

suggests that R.C. was biased in favor of the State. Accordingly, the trial court did not err in denying Collins's motion to remove R.C. for cause.

For these reasons, Collins's application for rehearing is overruled.

APPLICATION FOR REHEARING OVERRULED.

Kellum, J., concurs. Windom, P.J., concurs specially, with opinion, which McCool, J., joins. Minor, J., concurs in the result. Cole, J., dissents, with opinion.

WINDOM, Presiding Judge, concurring specially.

Both parties, as well as this Court, agree that the admission of a statement given by Kelvin Wrenn, a nontestifying codefendant, violated Sherman Collins's Sixth Amendment right of cross-examination. Bruton v. United States, 391 U.S. 123 (1968). Constitutional violations such as this may be held harmless only "if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." Delaware v. Arsdall, 475 U.S. 673, 681 (1986).

Judge Joiner's dissent on original submission summarized his view of the evidence against Collins: "In the case before us, the State's evidence against Collins included Collins's written confession, witness statements identifying a black male in an orange shirt at the scene of [Detrick] Bell's murder as a person of interest, and Wrenn's statement to law-enforcement officers implicating Collins in Bell's murder." Collins v. State, [Ms. CR-14-0753, Oct. 13, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017) (Joiner, J., dissenting). Judge Cole's dissent today on application for rehearing appears to adopt Judge Joiner's view of the evidence and states

that this Court's "main opinion [on original submission] ostensibly agreed with Judge Joiner's assessment of the dearth of other evidence pointing to Collins's guilt beyond a reasonable doubt." ___ So. 3d at ___ (Cole, J., dissenting).

I do not agree with Judge Cole's perspective on the main opinion. I do agree with both Judge Joiner's and Judge Cole's dissenting opinions, though, that the harmless-error analysis in this Court's main opinion on original submission was wanting. The main opinion held that the error was harmless because Collins's confession "contained more detail than the statements that were attributed to Wrenn, and it was corroborated by other testimony." Collins, ___ So. 3d at ___. I do not believe that the main opinion adequately set forth the strength of the State's evidence, and I believe this failing is shared by the dissents.

As the main opinion recognized, Collin's confession was compelling evidence of his guilt.[1] Collins admitted to shooting Bell in exchange for

[1]I see no reason to exclude it from consideration in a harmless-error analysis. See Collins, ___ So. 3d at ___ (Joiner, J., dissenting) ("The State's evidence, excluding Collins's written confession, does not overwhelmingly establish Collins's guilt. (emphasis added)).

Wrenn's promise to pay him $2,000. In other words, Collins admitted to committing a capital offense and to an aggravating circumstance that made his offense death-eligible. See §§ 13A-5-40(a)(7) and 13A-5-49(6), Ala. Code 1975.

With respect to identifying Collins as the shooter, I believe there is more to be gleaned from the record than some "witness statements identifying a black male in an orange shirt at the scene of [Detrick] Bell's murder as a person of interest." Collins, ___ So. 3d at ___ (Joiner, J., dissenting). Bell was killed by a gunshot to the head while standing outside the Morning Star Community Center with Terrod Sturdivant and Martez Rodgers. According to Sturdivant, Bell was shot just moments after Collins was introduced to their group by Grant Kimbrough. (R. 485-86.) Even so, neither Sturdivant nor Rodgers could identify the shooter – Sturdivant had turned his back to Bell immediately before the shooting to answer a call on his cell phone and Rodgers stated that it was too dark to identify the shooter. (R. 453, 483.) Rodgers was, however, able to provide a description of the shooter's apparel – he repeatedly testified that

the shooter was wearing an orange shirt and blue jeans. (R. 452, 455-58, 461, 463, 467.)

Angela Jackson, Collins's girlfriend, testified that Collins was wearing an orange shirt and blue jeans that evening, and Sturdivant and Rodriguez Brunson confirmed that Collins was wearing an orange shirt bearing the logo of Reese's brand candy. (R. 342, 484, 555.) Additionally, Tommy Charles Nixon, who was working as a security guard at the community center, testified that he saw a man in an orange shirt bearing the Reese's logo arrive that evening with Wrenn, and Jackson testified that Collins went to the community center with Wrenn. (R. 342, 610.)

Of course, the color of a person's shirt is not akin to a fingerprint or DNA evidence – shirt color is hardly unique. Nonetheless, I believe the color of Collins's shirt is inculpatory under the circumstances here. Sturdivant testified that Collins was the only person in the vicinity of the shooting wearing an orange shirt. (R. 530.) This is significant because both Sturdivant and Rodgers described a shooting at close range. Rogers in particular testified that the shooter was a few feet away from Bell, and

he agreed that "this guy in the orange shirt and blue jeans just walked up out of the blue and shot and killed [Bell]." (R. 461, 471.)

Bell's death was indeed "out of the blue." The shooting was not the culmination of an escalating altercation; both Rodgers and Sturdivant testified that Bell had not been arguing with anyone at the community center. (R. 460, 523.) Nixon likewise testified that there had been "no fights at all" at the community center that evening. (R. 595.) Nor was Bell's murder part of a robbery; Sturdivant testified that he collected money that fell from Bell's pocket after the shooting. (R. 492.) The shooting of Bell was a premeditated act and the motive – money – is thoroughly explained by Collins's own confession that the killing was a murder for hire.

I also find Collins's actions after the shooting to be incriminating. Rodgers stated that after Bell was shot, the shooter walked away from the community center. (R. 453.) Sturdivant, after hearing the gunshot, stated that he fled to a safe spot behind a vehicle, generally noting that "[e]verybody was running." (R. 527.) There was an exception, of course. Sturdivant saw Collins walking "towards the road ... by himself." (R. 488.)

Like Sturdivant, Nixon saw Collins after the shooting. At the time of shooting, Nixon was in an area near the road and moved toward the community center upon hearing the gunshot. Nixon described the scene as "chaos," with people "scatter[ing] to their cars." (R. 632-33.) Nixon, however, saw one person walking away from the community center toward the road – a man in an orange shirt, who was the same individual he had seen arrive at the community center with Wrenn. (R. 612, 632.) There is no doubt this individual was Collins. Collins's casually walking away from the scene of the shooting is, in my opinion, highly suspect.

Finally, I find the portion of Wrenn's statement that was admitted into evidence to be of limited value. The statement provided Wrenn's motive for wanting Bell killed, along with the source of Collins's murder weapon. Against the backdrop of the State's other evidence, this added little to the State's case and was not particularly prejudicial to Collins.

In sum, the State's evidence indicated that the shooter was in relatively close range to Bell and was wearing an orange shirt; the shooter fired his pistol once, striking Bell in the head, and walked away toward the road; Collins, who had just been introduced to Bell, was the only

person in the vicinity wearing an orange shirt and was the only person seen walking away toward the road. When the foregoing evidence is considered in conjunction with Collins's own confession, I can "confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." Arsdall, 475 U.S. at 681. Therefore, I concur in overruling Collins's application for rehearing.

McCool, J., concurs.

COLE, Judge, dissenting.

I agree with this Court's assessment of Sherman Collins's argument concerning potential juror R.C. However, I was not a member of this Court when the opinion on original submission was decided, and I believe this Court erred on original submission when it found that trial court's error in admitting his codefendant's statements to law enforcement was harmless. In my view, Collins's argument warrants granting his application for rehearing and reversing his convictions and sentences. Thus, I respectfully dissent.

In his brief on appeal and in his application for rehearing, Collins argues that the trial court erred when it admitted "two redacted written statements made by [his] nontestifying codefendant Kelvin Wrenn." (Collins's brief, p. 18; Collins's application, p. 48.) The State conceded that the admission of Wrenn's statements was error but argued that, "in the full context of Collins's case, the error was harmless." (State's brief, p. 17.) According to the State, because Collins gave a statement to law enforcement confessing his involvement in Detrick Bell's murder, the error was harmless.

This Court agreed with Collins and the State that the trial court's admission of Wrenn's statement was erroneous and that it violated Bruton v. United States, 391 U.S. 123 (1968). This Court then noted that " '[t]he mere finding of a violation of the Bruton rule in the course of the trial ... does not automatically require reversal of the ensuing criminal conviction.' " Collins v. State, [Ms. CR-14-0753, Oct. 13, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017) ("Collins I") (quoting Schneble v. Florida, 405 U.S. 427, 430 (1972)). This Court explained that, in this case, "Collins fully confessed to all elements of the charges against him," that his "confession was properly admitted into evidence," that the confession "contained more detail than the statements that were attributed to Wrenn, and [that] it was corroborated by other testimony." Therefore, this Court held that the "Bruton violation was harmless beyond a reasonable doubt." Collins I, ___ So. 3d at ___.

After reviewing this Court's decision, the arguments of the parties, the record on appeal, and caselaw relevant to harmless-error analysis, I am convinced that this Court's harmless-error analysis in this case was incorrect.

This Court did correctly conclude (1) that a Bruton violation is subject to harmless-error analysis, (2) that, because a Bruton violation is a constitutional error, it is "harmless" only if the error is harmless beyond a reasonable doubt, and (3) that, in some cases, a defendant's confession can render harmless the erroneous admission of a codefendant's statement. But this Court incorrectly concluded that the admission of Wrenn's statements was harmless.

In Neelley v. State, 494 So. 2d 669, 674 (Ala. Crim. App. 1985), this Court explained the harmless-error standard as follows:

> " '[B]efore a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.' Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705 (1967). It must appear 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained,' id. at 24, 87 S. Ct. at 828, because if 'there is a reasonable possibility that the evidence complained of might have contributed to the conviction,' id. at 23, 87 S. Ct. at 827 (quoting Fahy v. Connecticut, 375 U.S. 85, 86-87, 84 S. Ct. 229, 230-231, 11 L. Ed. 2d 171 (1963)), then the error must be considered harmful.
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> " ... 'The two standards employed by the courts to determine whether a trial error is harmless are the "overwhelming evidence" test and the "harmless beyond a reasonable doubt" test.' Note: State v. Bonuchi: The Harmless

> Error Rule Applied To Miranda Exclusions, 27 St. Louis U.L.J. 727, 728 (1983):
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> > " 'Under the "overwhelming evidence" standard, the court on appeal will reverse the conviction only if the constitutionally admissible evidence does not provide an overwhelming indication of the defendant's guilt. Under the "harmless beyond a reasonable doubt" test, however, the conviction will be reversed if the tainted evidence could have reasonably contributed to the verdict.' Id., at 728."

In Carroll v. State, 215 So. 3d 1135, 1164 (Ala. Crim. App. 2015), this Court explained:

> "In Ex parte Greathouse, 624 So. 2d 208, 211 (Ala.1993), the Alabama Supreme Court held that an error may be harmless if 'evidence of guilt is "virtually ironclad." ' (citations and quotation marks omitted). ' "When reviewing the erroneous admission of an involuntary confession, the appellate court, as it does with the admission of other forms of improperly admitted evidence, simply reviews the remainder of the evidence against the defendant to determine whether the admission of the confession was harmless beyond a reasonable doubt." ' Wiggins v. State, 193 So. 3d 765, 785 (Ala. Crim. App. 2014) (quoting Arizona v. Fulminante, 499 U.S. 279, 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)). Thus, the erroneous admission of a confession will be harmless if, excluding the confession, the remainder of the 'evidence of guilt is "virtually ironclad." ' Ex parte Greathouse, 624 So. 2d at 211. See also Albarran, 96 So. 3d at 154; Richardson v. State, 819 So. 2d 91, 103 (Ala. Crim. App. 2001)."

In other words, "[t]he harmless error rule excuses the error of admitting inadmissible evidence only because the evidence was so innocuous or cumulative that it could not have contributed substantially to the adverse verdict." Ex parte Baker, 906 So. 2d 277, 284 (Ala.2004) (emphasis added).

Although this Court held that the admission of Wrenn's statements was harmless because those statements corroborated Collins's statement to law enforcement, that "corroboration" is precisely the reason the admission of Wrenn's statements were not harmless and likely had a "substantial and injurious effect or influence in determining the jury's verdict." Fry v. Pliler, 551 U.S. 112, 116 (2007).

Here, Collins's defense was based, in part, on a multi-pronged attack of his statement to law enforcement. Part of that strategy was to show that it was law enforcement, not Collins, who actually wrote out the statement and that other State witnesses, whom law enforcement had also written statements for, noted issues or inaccuracies with the way law enforcement transcribed their conversations. (See R. 945.) But Collins primarily attacked his statement by arguing that it was coerced based on

the conditions of Collins's pretrial confinement. (See R. 943-44.) Certainly, the jury was free to give whatever weight it chose to Collins's defense theory about his statement to law enforcement. But the erroneous admission of Wrenn's statement, which corroborates parts of Collins's statement, would have had a negative impact on the arguments Collins made about his statement, undercutting Collins's defense.

In fact, in its rebuttal closing argument, after talking about Collins's confession to the crime, the State undercut Collins's defense regarding the circumstances surrounding his confession by pointing to Wrenn's statement, which was later determined to have been erroneously admitted into evidence:

> "[The defense] make[s] pretty quick comments about his co-conspirator's Kelvin Wrenn's statement. Why? Because that really doesn't fit in this whole strategy that this is all just something trumped up by Investigator Davis. That don't fit at all.
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> "Why doesn't it fit at all, ladies and gentlemen? Because you know that Investigator Davis wasn't the only one that interviewed Kelvin Wrenn. You heard testimony from Agent Bryan Manley who was asked to come and assist the Sumter County Sheriff' s Office in the investigation of this case and he alone with David Ratliff, another agent, they interviewed Kelvin Wrenn. They interviewed Kelvin Wrenn without even

knowing what he said in his prior statements. Luther Davis wasn't even present. They documented a statement from Kelvin Wrenn separate and apart from Luther Davis. You've heard portions of the statements that Kelvin Wrenn gave to Investigator Davis and portions of statements that he gave to Agent Bryan Manley. You will have those when you go back in the jury room and deliberate and arrive at a verdict in this case.

"In the statement Kevin Wrenn gave to Investigator Davis on June 18th of 2012--and again, the portions that the Court ruled were admissible for purposes of this case, I'll submit to you, ladies and gentlemen, take a look at the parts where he said, 'I grabbed my .22 pistol and I gave Sherman my .454 pistol. I saw Detrick Bell and I told Sherman I did not like Detrick because he had someone to break into my mother's house years ago. I talked to Sherman and asked him what did he do with my gun he used to kill Detrick?' That's what Kelvin Wrenn said in his statement that was to Investigator Davis.

"On June the 19th he gave a statement to Agent Bryan Manley and to Agent David Ratliff. In that statement, in that interview and there were two agents there, so. 'I agreed to help with helping with security. Later that evening while driving to the rap party at the Morning Star Community Center I asked Sherman to help me with security. When we got to the Morning Star Community Center, I gave Sherman my .454 revolver pistol and I had a .22 Magnum revolver. I pulled--I rolled down my window and told him we were going to help with security. Minutes later I saw Speedy [Detrick Bell] and told Sherman that I don't like him. Speedy, because he sent somebody to break into my mama's house.'

"[The defense] didn't talk much about that, did they? That doesn't quite fit into their theory to y'all that this is all

> about a crooked cop just making it up, making it fit his investigation and falsely accusing somebody of doing something they didn't do. It doesn't quite fit into their argument that this is a broken system. It doesn't fit into their argument that our system doesn't work. Doesn't fit into their argument that the system that was in place when this investigation was done is unfair because this shows you that an independent source documented the exact same thing that this officer did. It is a true reflection of what Sherman Collins' co-conspirator was reporting to law enforcement.
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> "And you know what? He's saying the same thing to whoever is asking him, and he's saying that Sherman Collins is involved in the death of Detrick Bell. He's trying to get his gun back from him, the one he used to kill Detrick Bell. He's admitting that he gave him the gun. He's admitting that he pointed him out at the Morning Star Community Center that night as the person that he didn't like. They don't want you to consider that. They want to try to distract you and make you believe that his is all just a sham.
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> "How can you reconcile that, ladies and gentlemen? How can you reconcile defense counsel's allegations that Luther Davis has lied to you in his testimony with the evidence that you heard from these other witnesses? I mean, I don't even know how they can stand before you and make those allegations that he's crooked, that this is a sham, that he purgered [sic] himself when you look at this evidence. But that's what they're telling you."

(R. 983-86.)

As Judge Joiner explained in his dissenting opinion on original submission:

> "[T]he legally admissible evidence in this case was not 'virtually ironclad.' The State's evidence, excluding Collins's written confession, does not overwhelmingly establish Collins's guilt. The only other evidence against Collins, apart from his confession, was Wrenn's statement to law-enforcement officers along with some witnesses' statements identifying a black male in an orange shirt at the scene of Bell's murder as a person of interest. No witnesses ever positively identified Collins as Bell's shooter. (R. 445, 450-56, 459, 461-62, 483, 486-89, 526, 529, 560-63, 605.) None of the State's evidence, apart from Collins's confession, suggested that Bell was murdered by Collins in exchange for $2,000 from Kelvin Wrenn. (C. 17, 380; R. 1010.)"

Collins, ___ So. 3d at ___ (Joiner, J., dissenting). The main opinion ostensibly agreed with Judge Joiner's assessment of the dearth of other evidence pointing to Collins's guilt beyond a reasonable doubt when it concluded that Collins's confession, by itself, rendered the admission of Wrenn's statements harmless.

In my view, this Court cannot point to Collins's confession to find the admission of Wrenn's statements harmless when Collins's defense turned largely on the propriety of his statement to law enforcement. I cannot say with an abiding conviction that, given the State's reliance on Wrenn's statements to disprove Collins's arguments about his statement to law enforcement, the admission of Wrenn's statement did not have a

substantial impact on the jury's verdict. Perhaps the jury would have disbelieved Collins's defense about his confession if Wrenn's statement had not been admitted into evidence, but Collins is entitled to the opportunity to present his argument to a jury not tainted by Wrenn's inadmissible statements and the State's reliance on Wrenn's statements to undercut Collins's argument.

In sum, because I am not certain that the erroneous admission of Wrenn's statement did not have an impact on the jury's verdict and because an "uncertain judge should treat the error, not as if it were harmless, but as if it affected the verdict (i.e., as if it had a 'substantial and injurious effect or influence in determining the jury's verdict')," O'Neal v. McAninch, 513 U.S. 432, 438 (1995), I would grant Collins's application for rehearing and reverse his convictions and sentences.

Thus, I respectfully dissent.