

STATE OF LOUISIANA

*

NO. 2017-K-0010

VERSUS

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COURT OF APPEAL

RYAN POREE

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 510-042, SECTION "F"

Honorable Robin D. Pittman, Judge

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Judge Edwin A. Lombard

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(Court composed of Judge Edwin A. Lombard, Judge Daniel L. Dysart, Judge
Tiffany G. Chase)

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JUDGMENT REVERSED; REMANDED

NOVEMBER 29, 2017

The defendant/relator, Ryan Poree, seeks supervisory review of the trial court's denial of his *pro se* application for post-conviction relief. After consideration of the oral and written arguments presented by the State and on behalf of the relator in light of the record before this court and the applicable law, we grant the relator's writ application, reverse the trial court judgment denying the relator's application for post-conviction relief, and remand the matter back to the trial court for further proceedings.

Relevant Procedural History

In January 2012, the relator was charged by indictment with two counts of second degree murder, one count of attempted second degree murder, and one count of obstruction of justice in violation of La. Rev. Stat. 14:30.1, 14:(27) 30.1, and 14:130.1, respectively. He pleaded not guilty and not guilty by reason of insanity and, after a three day trial in February 2014, was found guilty as charged on all counts. In March 2014, the relator was sentenced to two terms of life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on the second degree murder charges; forty-nine years at hard labor for attempted second degree murder; and forty years at hard labor for obstruction of

justice. After an *Anders*¹ brief asking only for review of *errors patent* was filed by his appointed appellate counsel, this court affirmed the relator's conviction and sentence. *State v. Poree*, 2014-0691 (La. App. 4 Cir. 3/18/15), 166 So.3d 372, ²*writ denied*, 2015-0741 (La. 3/4/16), 188 So.3d 1056.

In October 2016, the relator filed a timely³ *pro se* application for post-conviction relief which was denied by the trial court in a judgment dated November 9, 2016. The relator sought supervisory review of that decision and, after review of the relator's writ application, this court found that the trial court only addressed the issue of whether defense counsel prevented the petitioner from testifying in its denial of the relator's application and was notably silent regarding the relator's claim that the trial court itself also prevented him from testifying. After finding the relator's other claims without merit, we denied the writ in part but granted it in part for the purpose of appointing the Tulane Law Clinic to represent the relator on this issue and placing the matter on the docket for oral argument.

Applicable Law

Pursuant to La. Code Crim. Proc. art. 930.3(1) post-conviction relief shall be granted if the conviction was obtained in violation of the state or federal constitutions.

As recognized by both the federal and state constitution, a criminal defendant's right to testify is fundamental. Specifically, the state constitution provides in pertinent part: "[a]n accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a

¹ *Anders v. California*, 386 U.S. 738 (1967).

² The facts underlying the charges, although not pertinent to the discussion at hand, are set out in considerable detail in this court's opinion on appeal.

³ See La. Code Crim. Proc. 930.8

defense, and to testify in his own behalf.” La. Const. art. I § 16. Both state and federal jurisprudence recognize that “a criminal defendant's right to testify is fundamental and personal to the defendant” and the decision to “*testify in one's own behalf*” is “ultimately a decision for the accused to make.” *State v. Hampton*, 00-0522, p. 4 (La. 3/22/02), 818 So. 2d 720, 723, *on reh'g in part* (6/7/02) (citing *Wainwright v. Sykes*, 433 U.S. 72, 93 n. 1, (1977) (Burger, C.J., *concurring*) (emphasis in original). Therefore, “there is no rational justification for prohibiting the sworn testimony of the accused, who above all others may be in a position to meet the prosecution's case.” *Hampton, supra* (quoting *Ferguson v. Georgia*, 365 U.S. 570, 582, (1961)).

The U.S. Supreme Court has been “unequivocal” in holding that the U.S. Fifth, Sixth and Fourteenth Amendments guarantee a defendant’s right to testify. *Hampton, supra* (citing *Rock v. Arkansas*, 483 U.S. 44 (1987)). Specifically, the opportunity to testify is a necessary corollary to the Fifth Amendment guarantee against compelled testimony because it is only logical that the reverse is true, *i.e.*, “***a criminal defendant cannot be compelled to remain silent by defense counsel.***” *Hampton*, 00-0522, p. 6, 818 So.2d at 724 (quoting *U.S. v. Teague*, 953 F.2d 1525, 1531 (11th Cir.1992) (*en banc*)) (emphasis in original). Likewise, the defendant’s right to testify is implicit in the Compulsory Process Clause of the Sixth Amendment because “logically included in the accused’s right to call witnesses whose testimony is ‘material and favorable to his defense’ is a ***right to testify himself, should he decide it is in his favor to do so***” because in many criminal cases “***the most important witness for the defense . . . is the defendant himself.***” *Hampton*, 00-0522, p. 6, 818 So.2d at 724-25 (citing *Rock v. Arkansas*, 483 U.S. 44, 52 (1961) (emphasis in original). Finally, the right to testify on one’s

own behalf is one of the rights that is essential to procedural due process and, thus, constitutionally required under the Fourteenth Amendment. *Hampton*, 00-0522, p. 7, 818 So.2d at 725.

As reiterated by the Louisiana Supreme Court in *Hampton*, the denial of an accused's right to testify is not amenable to harmless-error analysis because the right " 'is either respected or denied; *its deprivations cannot be harmless.*' " *Hampton*, 00-522, p. 14, 818 So.2d at 729 (quoting *State v. Dauzart*, 99-3471 (La. 10/30/00), 769 So.2d 1206, 1210-11. "Therefore, . . . whenever a defendant is prevented from testifying, after unequivocally expressing his desire to do so, the defendant has been denied a fundamental right and suffers detrimental prejudice." *Hampton*, 00-522, p. 14, 818 So.2d at 729.

Discussion

In this case, the relator unequivocally expressed his desire to testify numerous times before closing arguments and once again after closing arguments. Specifically, the trial transcript in the record shows three assertions by the relator that he wanted to testify. First, the relator interrupted the rebuttal testimony of Dr. Blue stating: "**I didn't understand, ya' heard me? Put me on that stand.**" (Emphasis added). Defense counsel immediately requested a short break to confer with the relator and then Dr. Blue's testimony resumed. However, the record transcript reveals that the relator asserted his desire to testify twice again after Dr. Blue finished his testimony:

MR. POREE: Ms. Pittman, I want up on that stand. Straight up. I'm not—

THE COURT: I'm sorry Mr. Poree.

MR. POREE: Ms. Pittman, please may I hop up on that stand?

THE COURT: Well, Mr. Poree, your attorneys rested yesterday. They completed the defense's case and in these proceedings, the State of Louisiana had the right today to call upon witnesses and now that Dr. Blue is off the stand and they have indicated that they have no further witnesses, this is the end of the state's case and the defense doesn't get to call another witness.

(emphasis added).

The trial court subsequently supplemented the record by memorandum submitted on September 28, 2017, with an explanation that after the record (including the trial transcript) was submitted to this court, "it was realized that the transcript did not reflect all of **the outbursts** by the Defendant, Ryan Poree, that this court recalled." (emphasis added). Accordingly, the trial court submitted the following "additional excerpts" discovered by the court reporter upon additional review at the trial judge's request:

Day 3 - February 13, 2014 - (Reviewed audio from 11:48:59 am - 8:30:19 pm)

• **@ or about 7:55 pm**

Mr. Poree: Well, I walk on the (inaudible) if I been on the stand, ya heard me?

Ms. Park: Judge, can we have two minutes?

Mr. Poree: I'll walk on that stand.

Ms. Park: Can we have two minutes, judge? Thank you.

Mr. Poree: No, you can't go back and tell them nothing. Let me walk on that stand.

• **@ or about 7:57 pm**

Mr. Poree: That's what that paper say. Read what that **tape** say. That's my life. Fuck what he wrote. Look on the tape, what the tape say? What the tape say is not the same exact thing **as** that paper **say**, ya heard me? Look on the tape, **it's not** - there's nothing on the paper. •

• **@ or about 8:06 talk.**

The Court: All right. Dr. Blue, I'm sure you've been waiting for me to say this, but you can step down (laughter).

The Witness: (Laughs) Your Honor, I appreciate that.

Jurors: (Laugh)

The Court: And you can leave the courthouse.

Mr. Poree: I just want to talk for myself. Nobody gonna talk better so let me.

• **@ or about 8:08:29 pm**

Ms. Reed: Judge, the state has no additional witnesses for rebuttal.

Mr. Poree: Miss Pittman, I want **to hop up on that stand, straight up.**

The Court: I'm sorry, Mr. Poree.

Mr. Poree: Miss Pittman, please, can I hop on that stand?

The Court: Well, Mr. Poree, your attorneys rested yesterday.

Mr. Poree: Yes, ma'am.

The Court: They completed the defense's case and in these proceedings, the State of Louisiana had the right today to call **rebuttal** witnesses and now that Dr. Blue is off the stand, and they have indicated that they have no further witnesses, which is the end of the State's case, and the Defense doesn't get to call another witness.

Mr. Poree: All right.

The Court: Okay.

Day 3 - February 14, 2014 (Reviewed audio from 12:01:37 pm - 5:28:37 pm)

• **@ or about 3:04 p.m.** (After closing arguments.)

Mr. Poree: May I speak. Miss Pittman? Can I, uh, take the stand, please, because I'm going to tell you. Let me take the stand. Your Honor.

The Court: You all need to have your client have a seat. Thank you.

(emphasis in original).

The State argues that the trial court judgment should be affirmed because the relator expressed his desire to testify only after defense counsel had rested and that a defendant is not entitled to a rebuttal. The normal order of trial is the presentation of evidence first by the State, then by the defendant, and then the State in rebuttal. However, La. Code Crim. Proc. art 765 specifically provides that the “[t]he court in its discretion may permit the introduction of additional evidence prior to argument.” La. Code Crim. Proc. art. 765(5); *see also Rock v. Arkansas*, 483 U.S. at 55 (when a state rule of evidence conflicts with the right to present witnesses, the rule may ‘not be applied mechanistically to defeat the ends of justice,’ but must meet the fundamental standards of due process”). Moreover, in this case, Dr. Blue did not testify in the State’s case-in-chief but was presented as a rebuttal witness (to the defendant’s affirmative defense of not guilty by reason of insanity) and the defense had filed a motion to allow surrebuttal testimony which the trial court had denied as premature.

The issue in this case in this case is straightforward. It is not whether the accused should always be allowed to present surrebuttal testimony, thereby restricting the trial court’s discretion in the matter. Nor is it whether the relator’s determination to testify against his counsel’s advice was a wise legal strategy or whether the jury would have found him a credible witness such that the outcome of the trial would have been different. Rather, the issue is whether an accused is deprived of a fundamental constitutional right when, after repeatedly and unequivocally stating his desire to testify before closing arguments, he is denied that right. Under the Louisiana and federal constitutions, as well as related Louisiana and federal jurisprudence, the trial court’s denial of a defendant’s clearly stated desire to testify on his own behalf violates a fundamental right and,

accordingly, is not subject to harmless error analysis. Therefore, the relator was entitled to post-conviction relief under La. Code Crim. Proc. art. 930.3(1).

Conclusion

The trial court judgment denying the relator's application for post-conviction relief is reversed and the matter is remanded back to the trial court for further proceedings consistent with this opinion.

JUDGMENT REVERSED; REMANDED.