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Oct 12 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER LEE BRIGGS,

APPELLANT

APPELLATE CASE NO. 2021-001501

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial judge erred in allowing prejudicial prior bad acts
testimony into evidence at trial.4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967)..... 7

Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994)..... 5

State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (2000) 4

State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) 3

State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007)3

State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990)..... 5

State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009) 3

State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012) 3

Rules

Rule 403, SCRE..... 3

Rule 404(b) 3, 5

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing prejudicial prior bad acts testimony into evidence at trial.

STATEMENT OF THE CASE

Appellant Christopher Lee Briggs was found guilty of trafficking in cocaine and possession of a controlled substance during a jury trial held at the December 2021 term of the Florence County General Sessions Court before Judge William H. Seals. Appellant was sentenced to imprisonment for a period of nine years and five months. William Foster Edgeworth, III, represented appellant at trial, and Assistant Solicitors David Richardson and John Jepertinger appeared on behalf of the state.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” Clasby, 385 S.C. at 154, 682 S.E.2d at 895; see State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)” to show, *inter alia*, the existence of a common scheme or plan. Clasby, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”).

ARGUMENT

The trial judge erred in allowing prejudicial prior bad acts testimony into evidence at trial.

At trial, police officers Shannon McKenzie, Andron Brown, and Kendrick Spears all testified that on March 13, 2021, they were riding through a high crime area in Florence and found a Jaguar vehicle parked on Lynch Street near a store. The officers approached the vehicle and found a male later identified as appellant sleeping inside at the driver's seat. Appellant was arrested immediately thereafter, and a search of his person yielded the presence of cocaine and a pill (oxycodone). R. 36, l. 10 – p. 49, l. 14; R. 53, l. 16 – p. 60, l. 8; R. 66, l. 14 – p. 72, l. 3.

The prejudicial testimony given by Officer Shannon McKenzie follows:

Solicitor: So you see a Jaguar vehicle that's parked outside the store?

Officer: Yes Sir.

Solicitor: Alright (sic). And why did you deem that significant?

Officer: Well, I had received information that [appellant] had recently been seen driving a silver Jaguar. The information actually that I was told was that it had a paper tag.

Defense Counsel: Objection Hearsay.

Solicitor: Well, was Mr. Briggs on your email list of people who had active warrants?

Officer: Yes, Sir. R. 39, l.18-p. 40, l.5.

Here, there was a reference to a paper car tag on the vehicle in which appellant was seated. In State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (2000), the Court reversed where it found that an officer lacked the reasonable suspicion required to justify a traffic stop where the mere presence of a paper tag (wrongly suggesting that the car was stolen or uninsured) that was located on the back of the car without more did not provide reasonable suspicion that the driver

was involved in criminal activity. See also Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994), where the Court held that police officers did not have reasonable suspicion to detain the defendant, who was a passenger in a vehicle which officers stopped, where the basis of the traffic stop included the location of the vehicle in a high crime area and that the vehicle contained a paper tag. Therefore, in the case at bar, the officers presented the jury with prejudicial testimony regarding the case by informing the jury that appellant was under suspicion on the day of his arrest in part because the vehicle he drove had a paper tag affixed to it.

Moreover, it was error to allow the jury to hear testimony to the effect that the officers were looking for appellant because there were outstanding arrest warrants sworn out against him in existence as this constituted prejudicial prior bad acts testimony.

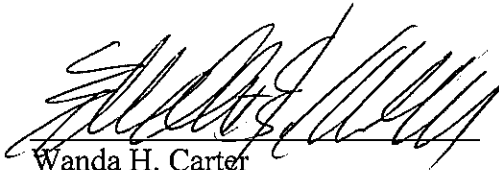
Evidence of prior criminal acts which are independent of and unconnected to the crime for which the accused is on trial is inadmissible for the purpose of showing that the accused possesses a criminal character or a propensity to commit criminal offenses. State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990). Evidence of other crimes, wrongs, or acts is not admissible to show motive, identity, the existence of common scheme or plan, the absence of mistake or accident, or intent. See also Rule 404(b), SCRE, which states that although relevant, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.”

In the case at bar, the mention of a paper tag on the vehicle appellant drove and outstanding arrest warrants sworn against appellant all amounted to prejudicial testimony suggesting that appellant had a criminal disposition and/or the criminal propensity to commit crimes; and the inference was that appellant was likely guilty of the crimes for which he was on trial. This testimony in question was more prejudicial than probative and thus denied appellant of

his right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1, section 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that this Court reverse appellant's convictions and sentences, and remand his case to the lower court for a new proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of October, 2022.

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CASE NO. 2021-001501

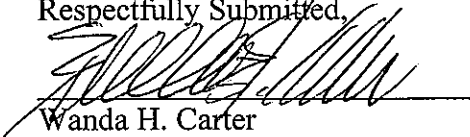
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Lee Briggs states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William H. Seals, which was held on December 6-8, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Christopher Lee Briggs.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of October, 2022.

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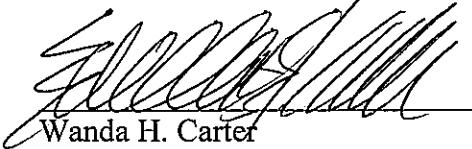
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Transcript dated December 6-8, 2021
- (2) Indictment

I certify that this designation contains no matter which is irrelevant to this appeal.



Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 12th day of October, 2022.

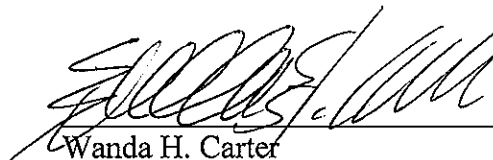
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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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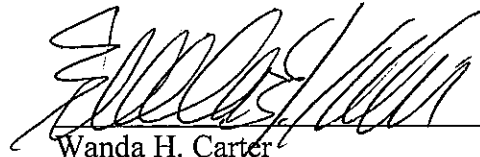
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APPELLANT

APPELLATE CASE NO. 2021-001501

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blicht, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Christopher Lee Briggs, #332194, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 12th day of October, 2022.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT