STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAMON RODRIGO HOPE,

APPELLANT.

APPELLATE CASE NO. 2022-000454

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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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 Ramon Rodrigo Hope was convicted of possession with intent to distribute crack cocaine and unlawful carrying of a pistol during the January 2022 term of the York County General Sessions Court before Judge Daniel Hall, who sentenced him to an aggregate prison term of fifteen years. Assistant Solicitor Joshua L. Thomas prosecuted the case, and Attorney John A. O'Leary represented appellant at trial.

Appellant appealed his convictions and sentences. 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.

Appellant was found guilty per jury trial of possession with intent to distribute crack cocaine and unlawful carrying of a pistol.

Police Officer Anthony Breeden testified that while he was on patrol in York County on September 27, 2020, he observed a vehicle moving at a high rate of speed on Black Street and effected a traffic stop thereafter. Officer Breeden stated that after the traffic stop, the driver exited the vehicle and fled. Officer Breeden explained that he was unable to apprehend the driver. Subsequently, the vehicle was inventoried and towed. Crack cocaine was found on the ground below where the driver's car door was left standing open, and a handgun was found underneath the front seat of the vehicle. R. 78, l. 22 – p. 100, l. 19.

Officer Breeden informed the jury that he finally realized identity of the driver as appellant, who was arrested ultimately in connection with this case. Officer Breeden explained how the identity of the driver was finally revealed based on the following testimony:

> Defense Counsel: Do you recall saying you didn't know who [the driver] was?
>
> Officer Breeden: Well, I knew who he was by his face and we later determined the name and I knew him from multiple dealings with him over the years, but I just didn't recall his name. There's a lot of people I know by face and then I'll see a name and say, oh, that's who that is. R. 104, l. 21-25.

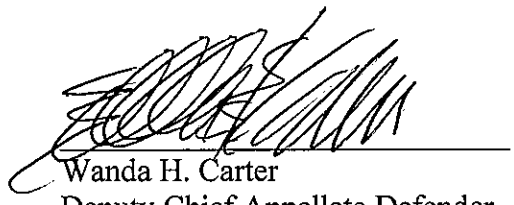
Clearly, the officer's statement that he had multiple dealings with appellant over the years suggested that the dealings with appellant occurred in a criminal context, i.e., prior bad acts. Evidence of prior criminal acts which are independent of and unconnected to the crime for which the accused is 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 the officer's prior dealings with appellant clearly meant that appellant had been involved in prior bad acts (criminal) or prior crimes. This was prejudicial testimony that suggested appellant had a criminal disposition and/or the criminal propensity to commit crimes; and the inference was that appellant was likely guilty of the instant 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, § 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 26th day of October, 2022.

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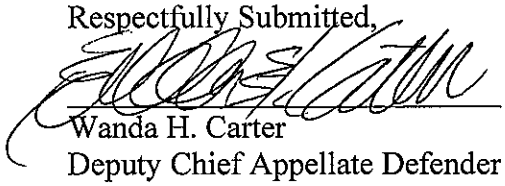
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ramon Rodrigo Hope 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 Daniel D. Hall, which was held on January 11 - 12, 2022, 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 Ramon Rodrigo Hope.

Respectfully Submitted,



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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 Trial Transcript dated January 10-12, 2022
(2) Indictments

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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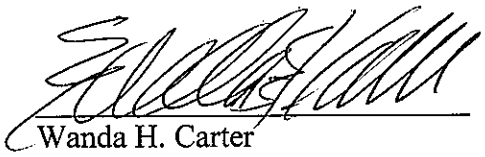
(803) 734-1330

ATTORNEY FOR APPELLANT

This 26th day of October, 2022.

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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