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Aug 09 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN LEE DUNCAN,

APPELLANT

APPELLATE CASE NO. 2023-000138

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 AUTHORITIES

Cases

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

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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. Peaks, 302 S.C. 378, 396 S.E.2d 362 (1990) 5

State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992) 5

State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013) 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

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Constitutional Provisions

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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 Steven Duncan was found guilty of failure to stop for a blue light and trafficking in methamphetamine per jury trial held in his absence during the January 2023 term of the Oconee County General Sessions Court before Judge R. Scott Sprouse. On January 13, 2023, Judge Sprouse sentenced appellant to imprisonment for an aggregate ten-year period. Appellant was represented at trial by Suzanne E. Earle, Esquire, and Assistant Solicitor Jason Christopher Alderman prosecuted the case.

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; and 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 James Hellams and Robert Logan testified that on July 20, 2021, they responded to a report regarding a wrecked vehicle located on Stamp Creek Road in Oconee, South Carolina. While at the scene, the officers saw an individual whom they recognized as appellant drive by them. The officers decided to follow appellant based on their belief that an arrest warrant had been sworn out against him. At some point thereafter, the officers activated the patrol car blue lights. Appellant did not stop until he crashed the vehicle he drove into a tree nearby. Then, appellant fled, but was apprehended by the officers minutes later. Upon appellant's arrest, the officers observed a pouch near him that contained methamphetamine. Officer Hellams testified as follows about why they followed appellant on the day in question:

Question: What happened?

Answer: "While two others were farther into the woods, I observed an individual that I knew to be an associate of Mr. Clark's, the one we were originally looking for. I recognized his vehicle, recognized him, knew that he had an active warrant...and we proceeded back and tried to catch up to him.

Question: And who was that individual?

Answer: That was Steven Lee Duncan.

R. 42, 1.24-p. 43, 1.8.

Note the solicitor's opening statement regarding appellant and the warrant issue:

"The [officers] were out in the county looking for a particular individual. That particular individual was known to associate with the defendant, Mr. Duncan. Mr. Duncan was known at that time to law enforcement to have a warrant out for his arrest, which means that if law enforcement was to see him, they do what law enforcement does and they arrest him. R. 36, lines 12-18.

Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis. State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013). Moreover, evidence of prior bad acts is inadmissible to suggest that the accused has the propensity to commit the crime charged. State v. Peake, 302 SC 378, 396 S.E. 2d 362 (1990). State v. Smith 309 SC 409, 419 S.E. 2d 816 (1992). Prior bad acts evidence is not admissible to show that the accused is a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Also, even if prior crimes are considered under any exception; nonetheless, the prior crimes still cannot be used to show that the accused is a bad person. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). The Peake Court reiterated the rule that evidence of prior bad acts that are independent of and unconnected to the crime for which the accused is on trial is inadmissible at trial. Prior crimes or bad acts cannot be presented to show that the defendant had the propensity to commit the crime charged, i.e. that he is a bad person, or to suggest that the accused has the propensity to commit the crime charged. State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990); State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992).

In the case at bar, appellant was not on trial for any prior arrest warrant issued against him. Therefore, any mention of a prior arrest warrant sworn out against appellant served only to confuse the jury and prejudice appellant's defense as this prior bad act evidence lended credence to the idea that appellant had a criminal disposition and was probably guilty on the charges for which he was on trial. Here, the solicitor's remarks and Officer Hellams' testimony about a prior criminal case against appellant for which there was an arrest warrant sworn out against him bore no relevance to appellant's arrest on the instant charges for which he was on trial, particularly since there was no conviction on that prior arrest warrant.

The error here constituted prejudicial prior bad acts evidence that violated appellant's right to a fair trial under the Fourteenth Amendment and Article 1, §3 of the South Carolina State Constitution, especially since it was highly likely that the prior bad acts evidence contributed to the jury's guilty verdicts and could not be deemed harmless error. See State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1991), citing to Chapman v. California, 386 U.S. 18 (1967). The trial judge erred in allowing the jury to hear the prejudicial prior bad acts testimony and statement at appellant's trial.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of August, 2023.

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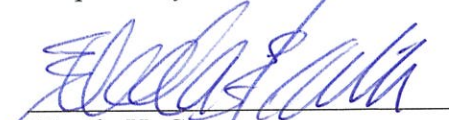
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steven Lee Duncan 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 R. Scott Sprouse, which was held on January 9 - 13, 2023, 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 Steven Lee Duncan.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of August, 2023.

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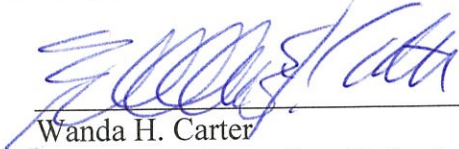
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial transcript and sentencing transcripts
- (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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This 9th day of August, 2023.

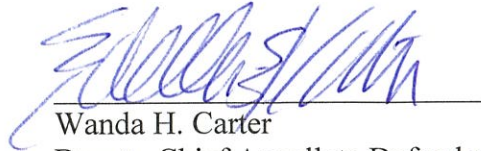
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CERTIFICATE OF COUNSEL

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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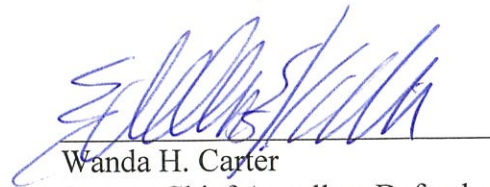
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CERTIFICATE OF SERVICE

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. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Steven Lee Duncan, #389956, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 9th day of August, 2023.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT