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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTEL DEKARLOS GADDIS,

APPELLANT.

APPELLATE CASE NO. 2022-000553

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by refusing to exclude the identification of appellant where it resulted from a one-man show-up where appellant was in handcuffs in the presence of police officers since his identification procedure was impermissibly suggestive and led to the substantial likelihood of an irreparable misidentification?

STATEMENT OF THE CASE

Appellant was indicted at the April 2022 term of the Lexington County grand jury for two-counts of assault and battery in the first-degree. R. *. His case was called to trial on April 18, 2022, before the Honorable Walton J. McLeod, IV. Elizabeth Fullwood represented the appellant. Kelly Oppenheimer and Kyle Smith were the assistant solicitors. Tr. 1.

On April 20, 2022, appellant was found guilty on both counts. Tr. 295, ll. 4-13. Judge McLeod sentenced appellant to concurrent terms of four-years imprisonment. Tr. 306, l. 24 – Tr. 307, l. 2.

This appeal follows.

STANDARD OF REVIEW

“[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact.” State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) (finding show-up identification unreliable as a matter of law). “Generally, the decision to admit an eyewitness identification is at the trial judge’s discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error.” Id. “In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” Id. Questions of law are reviewed *de novo*. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

ARGUMENT

The court abused its discretion by refusing to exclude the identification of appellant where it resulted from a one-man show-up where appellant was in handcuffs in the presence of police officers since his identification procedure was impermissibly suggestive and led to the substantial likelihood of an irreparable misidentification.

Relevant Facts

Prior to trial, a Neil v. Biggers, 409 U.S. 188 (1972), identification hearing was held. Lexington County Sheriff's Department Lieutenant Ben Treaster testified. Tr. 46, ll. 6-20. Treaster recalled that shortly after 11:00 p.m. on August 11, 2017 he was dispatched regarding a noise disturbance "that escalated to a shooting incident." Tr. 47, ll. 13-21. About fifteen to twenty minutes after the 911 call Treaster met Bryan Barton at the scene of the shooting where Barton had returned after fleeing from it in his truck. Tr. 47, l. 22 – Tr. 48, l. 16.

Barton told Treaster that the perpetrator was driving a "light older model police-type vehicle." The shooter was described only as a "black male." Tr. 48, l. 19 – Tr. 49, l. 3.

Treaster said that he received word that the suspect and his vehicle were located about a mile and a half from the location of the shooting at Pop's convenience store. Tr. 49, ll. 4-8. Treaster took Barton with him to Pop's to see if he could identify the suspect as being the shooter. Tr. 49, ll. 12-22.

Treaster said he only told Barton that they had a subject who "was possibly involved in the incident" at this convenience store. Tr. 49, l. 22 – Tr. 50, l. 1. Treaster testified that Barton identified appellant within "a matter of seconds" in the parking lot as being the shooter. He admitted appellant was in handcuffs at the time of the identification. Tr. 50, l. 13 – Tr. 51, l. 22.

There were also several other police officers standing near appellant at the time. Tr. 51, l. 23 – Tr. 52, l. 4.

Treaster admitted that the only identifying characteristic he had of the suspect was that he was “a black male.” Tr. 54, ll. 22-25. Treaster did not ask Barton what the suspect was wearing at the time of the shooting, or about any other distinguishing marks or traits. Tr. 55, ll. 9-23.

Bryan Barton then testified that he and his wife had gone to dinner at Bozes in Lexington that evening. Tr. 58, ll. 10-21. At about 10:45 p.m. while driving home, Barton noticed a car speeding up behind him -- “all I saw was headlights.” Tr. 59, ll. 10-22. Barton described this car as a “light tan colored four-door. To me it looked like an old cop cruiser car.” Tr. 63, ll. 3-5. There was enough light, according to Barton, that he could tell that a man was driving the car. Tr. 63, ll. 16-20.

This car “tapped” the trailer hitch on the back of Barton’s truck.. Tr. 61, ll. 7-9. Barton got out of his truck to inspect the damage, and he maintained that he got close enough to see the driver. “I was like hey, Bud, are you all right, and he just kept staring at me.” Tr. 65, ll. 17-21.

Barton testified that he got back in his truck and told his wife: “We’re getting out of here and she said why and I said because something’s not right and she said what do you mean and about that time out of my peripheral I could see him coming up beside me in the adjacent lane and I looked over and he still - - here, again, he was just starting at me and I was like what is this guy’s deal, man, and I put my truck in drive and I was gonna (sic) go on across the intersection, he came out and got in the intersection, got in front of me.” Tr. 66, ll. 9-19. Barton said that as he drove through the intersection, he heard five-to-six-gunshots, and he drove away for safety. Strangely, Barton returned to the scene of the shooting where he called 911. Tr. 67, ll. 1-7.

Barton remembered that Lieutenant Treaster took him to Pop's convenience store for the identification. Treaster asked Barton: "If I could identify somebody or something to that extent." Tr. 69, ll. 4-15.

Barton said that at Pop's convenience store, he identified appellant within "milliseconds." He was "one hundred percent" sure that appellant was the man that shot a gun that night. Tr. 70, ll. 17-25. On cross-examination, Barton confirmed that no one was hit by a bullet that evening and that his vehicle also was not damaged. Tr. 76, ll. 8-17.

Defense counsel Fullwood argued that the identification in this case should be suppressed. She noted that identification method - - a one-man show-up - - had a substantial likelihood of an irreparable mistaken identification of appellant as being the perpetrator. Counsel emphasized that this was a quick encounter between Barton and the perpetrator, and that the police turned the headlights on appellant for him to be identified. This added to the entire unduly suggestive identification procedure. Tr. 80, l. 7 - Tr. 81, l. 13.

The solicitor argued that Barton had an opportunity to see the shooter and that the identification occurred less than a mile away from the site of the shooting. The vehicle was identified as a gold Crown Vic. The solicitor acknowledged that appellant was in handcuffs at the time of the identification. He still urged that this one-man show-up was not unduly suggestive. Tr. 82, l. 7 - Tr. 84, l. 8.

The judge briefly took the matter under advisement. When the judge returned to the courtroom, he noted that one-man show ups were generally disfavored. "I think there is somewhat uniqueness to this." The judge added that he would have "preferred" that appellant had not been in handcuffs at the time of the one-man show-up. Tr. 84, l. 21 - Tr. 85, l. 21. However, the judge ruled that an in-court identification would be allowed over the defense

objection, and he denied to motion to suppress the in-court identification of appellant as being the shooter. Tr. 84, l. 20 – Tr. 86, l. 1.

Jury In

In the presence of the jury, Angie Gunter, the 9-1-1 operator, said that the 9-1-1 call in this case came in at 11:16 p.m. on August 11, 2017. Law enforcement arrived on the scene at 11:38 p.m. Tr. 110, l. 5 – Tr. 113, l. 20.

Barton's wife, Michelle Barton, testified that she had gone to Bozes with her husband that night for dinner. On their way home, they were stopped at a stop light when "a car come flying up behind us kind of tailgating us" and "he tapped the backend of our truck." Tr. 116, l. 23 – Tr. 119, l. 20.

Mrs. Barton remembered that her husband got out of the truck and he walked behind it. She claimed that he was just determining if the driver of the other car "needed any assistance." "At that point in time, the guy just stared. Never said anything." Tr. 119, ll. 20-25.

Mrs. Barton maintained that the driver just kept staring at them. After that, he pulled in front of them in his Crown Vic. Mrs. Barton testified that the driver got out of his automobile and she heard gunshots. We "actually heard bullets fly by before we actually heard gunshots." Tr. 122, l. 19 – Tr. 123, l. 2. Mrs. Barton admitted that this happened at a "fairly dark intersection." Tr. 132, ll. 6-7.

On cross-examination, Mrs. Barton acknowledged that a civil suit had been filed against appellant in this case by her uncle who was an attorney. Tr. 127, l. 8 – Tr. 129, l. 10. Mrs. Barton maintained that she had never seen the lawsuit. She admitted, while reading a portion of the complaint in court, that the lawsuit alleged that appellant got out of his car that evening and approached the "plaintiff's vehicle with a handgun and proceeded to shoot six rounds at the

plaintiff and into the plaintiff's vehicle." Mrs. Barton readily acknowledged that this was not what happened. Tr. 128, ll. 6-11.

Bryan Barton testified that the Crown Vic was tailgating him that night, and the driver hit the trailer hitch on the back of his truck. Tr. 219, l. 11 – Tr. 220, l. 13. Barton said that he got out of the truck and walked to the back of his truck. Tr. 220, l. 17 – Tr. 221, l. 24. Barton got into a “*stare down*” with the driver of the Crown Vic, and Barton said this made him “uneasy.” Tr. 223, l. 8 – Tr. 225, l. 1. Barton admitted no words or angry gestures were exchanged between the two men. Tr. 224, l. 19 – Tr. 225, l. 14. Barton maintained that the perpetrator got out of his car and fired five to six shots “towards my wife’s side of the truck.” Tr. 228, l. 9 – Tr. 229, l. 12. Barton called 9-1-1.

Barton remembered being taken to Pop’s convenience store where he identified appellant “without hesitation” as appellant stood with his hands behind his back as the only person waiting there to be identified as the shooter in the parking lot. Tr. 231, l. 15 – Tr. 234, l. 22.

On cross-examination, Barton claimed that the civil lawsuit had been filed without his permission, and that he asked the attorney to withdraw the lawsuit. Tr. 238, l. 14 – Tr. 239, l. 19. Barton admitted that he had a gun with him that evening that was in the center console of his truck. He did not have a concealed weapons permit for this weapon. Tr. 241, ll. 14-24.

In a closing argument to the jury, the solicitor said that Barton’s identification was “one hundred percent positive” five years ago and that it had been a hundred percent positive that day in court. Tr. 270, ll. 10-16.

Defense counsel Fullwood argued that Barton never walked up to the car to talk to the person who had hit his truck, and Barton only saw alleged shooter for a few seconds. The only identification he could make was that the shooter was “a black male.” Tr. 271, ll. 17-24. This

was the “most generic description” of a shooter possible. Barton could not identify facial features or describe the skin tone or even estimate the shooter’s age or hair style. It was also very dark outside. Mrs. Barton essentially saw nothing, and she only wanted to collaborate what her husband said to the police. Tr. 271, l. 17 – Tr. 272, l. 15.

Counsel Fullwood also noted that the allegations in their civil lawsuit against appellant differed from their trial testimony. Tr. 272, l. 16 – Tr. 273, l. 7.

Discussion

A criminal defendant is deprived of his right to due process of law if an identification procedure arranged by the police is unnecessarily suggestive and conducive to an irreparable mistaken identification. “An in-court identification of an accused is inadmissible if a suggestive identification out-of-court procedure created a very substantial likelihood of irreparable misidentification.” State v. Liverman 398 S.C. 130, 138, 727 S.E.2d 422, 425-26 (2012), *citing* State v. Traylor 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004).

Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *See* Neil v. Biggers 409 U.S. 188, 198 (1972).

In this case, the identification by Barton resulted from a one-man show-up procedure. One-man show ups are unquestionably very suggestive. They are tolerated only because of extenuating circumstances or because they are very close in time to the crime. *See* Stovall v. Denno 388 U.S. 293 (1967).

It was undisputed here that appellant was in handcuffs at the time Barton viewed him in the Pop’s convenience store parking lot. Other police officers surrounded appellant or were at

least conspicuously present since appellant was in custody at the time. This was the most suggestive police procedure possible, and it was not justified by any extenuating circumstances. Appellant was already under arrest and the police could have easily arranged a photographic line-up to show to Barton and his wife. This would have prevented the unduly suggestive identification procedure in this case.

Instead, this one-man show-up, given the highly unusual facts of this case, led to a substantial likelihood of irreparable misidentification of appellant. Appellant should therefore be granted a new trial since the identification in this case denied him his right to due process of law.

See Neil v. Biggers 409 U.S. 188 (1972).¹

¹ The other legal issues in this case were a pre-trial motion to relieve counsel, and a challenge to the admissibility of appellant's statements. Tr. 45. In addition, there was a motion for a continuance which was denied. While denying the continuance motion the judge also ruled that SLED reports favorable to the prosecution could not be used at trial in an apparent sanction against the state for a Rule 5 violation. Tr. 103; tr. 252. Appellate counsel was unable to secure a copy of this pre-trial motion continuance transcript from the court reporter or from Court Administration. Other identifiable legal issues in this case appear at Tr. 165; Tr. 178; Tr. 182; and Tr. 246-250.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed, and this case remanded to the Lexington County court of general sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of December, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTEL DEKARLOS GADDIS,

APPELLANT.

APPELLATE CASE NO. 2022-000553

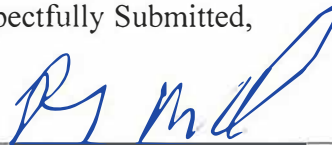
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Martel Dekarlos Gaddis states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Walton J. McLeod, IV, which was held on April 18 - 20, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Martel Dekarlos Gaddis.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of December, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

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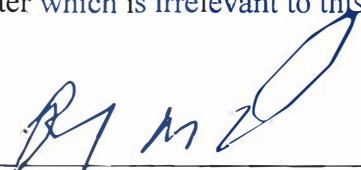
APPELLATE CASE NO. 2022-000553

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

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

- (1) True-billed indictment;
- (2) Entire Trial Transcript ;
- (3) Motion to relieve counsel transcript.

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


Robert M. Dudek
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This 8th day of December, 2023.

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Dec 08 2023

SC Court of Appeals

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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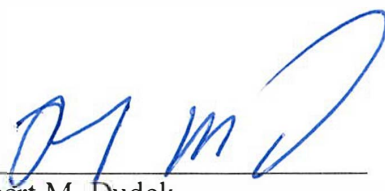
MARTEL DEKARLOS GADDIS,

APPELLANT.

APPELLATE CASE NO. 2022-000553

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Martel Dekarlos Gaddis, #387755, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 8th day of December, 2023.



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ATTORNEY FOR APPELLANT

From: [Pollard, Shelby](#)
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Subject: 2022-000553 The State v. Martel Dekarlos Gaddis - Anders Brief of Appellant
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Attachments: [Cover Letter to AG 12.08.23.pdf](#)
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Good Afternoon,

Please find attached for service in the above-referenced case the Anders Brief of Appellant which will be filed with the Court of Appeals today, December 8, 2023. The Record on Appeal will be served and filed next week as the due date for this brief is not until December 20, 2023.

Thank you,
Shelby

Shelby Pollard

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