

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

The State,

Respondent,

vs.

Forrest Kelly Samples,

Appellant.

INITIAL BRIEF OF RESPONDENT

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State v. Tucker, 320 S.C. 206, 464 S.E.2d 105 (1995)4

STATEMENT OF ISSUE ON APPEAL

The trial court did not err in requiring Appellant to remain in shackles where he was on trial for escape and had a prior escape conviction, and further, Appellant's shackles did not contribute to the verdict

STATEMENT OF THE CASE

Appellant was convicted for escape following a jury trial on June 18-19, 2012. The Honorable G. Thomas Cooper, Jr., sentenced Appellant to five years' imprisonment with credit for time served. The sentence runs consecutive to Appellant's present sentence of life plus seventy years' imprisonment.

STATEMENT OF FACTS

Appellant Samples escaped with co-defendant Andrew Storey. Storey was friends with Samples. They started to plan the escape four to five months before the prison break. Samples sharpened tools and Storey scraped wood at their jobs with Prison Industries II where they made hardwood flooring. Samples and Storey made a ladder from the flooring. When the plant closed, Samples and Storey hid in the plant and then put their plan in motion. They used the ladder they constructed and took another one from the plant to climb over two different fences. Storey did not see Samples again after they went over the second fence. Tr. pp. 90-99.

Storey was found on the railroad tracks near the prison. Tr. p. 69.

Agent Claude "Chip" Steppe of the Law Enforcement Division Fugitive Unit found Samples in the river.¹ Steppe focused his search on the riverbank when one of the

¹ The river was the nearby Broad River. See Tr. pp. 59-62 (describing aerial map and the surrounding geography by the Broad River Institute).

other members of the unit noticed a disturbance on the riverbank too large to be merely deer tracks. Agent Steppe contacted the Department of Natural Resources (DNR) to provide a boat so he could stand in the middle of the river and check out the bank from both sides. Agent Steppe testified that “a lot of times when people cross creeks, rivers, and streams they’ll leave good slide marks up and down the banks and then they’ll leave water on the bushes and limbs and stuff crossing into the wood line.” App. pp. 107- 110 (direct quote p. 109, lines 3-6).

Agent Steppe, two DNR wardens, and another tracker headed by boat down river from the landing. Steppe noticed a dead tree bent over the river with a bottle sitting on the stump. It looked fresh and was upright, not like a bottle that merely washed up on the stump. Some crackers also were sitting on the stump. Agent Steppe hopped out of the boat. Waist-deep, he waded towards the stump to discover Samples hiding in the water. App. pp. 110-112. Samples had a big gash on his arm, white from being in the water. App. p. 112. In all likelihood, he cut it going over the Constantine wire sitting atop the fencing at the prison. App. p. 98; p. 104 (Agent Steppe testified that Constantine wire is not like barbed wire that is used on cattle fencing; instead “Constantine is a wire that wraps the top of the fence, and on the edges of that wire it looks like razors and it literally will cut you like a razor.”).

ARGUMENT

The trial court did not err in requiring Appellant to remain in shackles where he was on trial for escape and had a prior escape conviction, and further, Appellant's shackles did not contribute to the verdict.

Appellant Samples alleges the trial court erred in allowing Samples to remain in shackles during trial. Samples wore, without objection or explanation, his prison uniform. Samples was serving a life sentence for murder, plus an additional seventy years' imprisonment. He was on trial for escape and already had a prior escape conviction. The prosecution reported he had six other escape attempts that were handled internally by the Department of Corrections. Samples' conviction was a foregone conclusion in light of overwhelming evidence presented at trial. The trial court did not err in requiring Samples to remain shackled, and further, the fact that Samples was shackled did not contribute to the verdict, so the conviction and sentence should be affirmed.

In Deck v. Missouri, 544 U.S. 622 (2005), the United States Supreme Court found routine use of shackles violates an accused's due process rights. Deck holds the following:

[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.

Id. at 635.

In the instant case, the shackling was justified based on the fact that Samples was

already serving a life sentence for murder and already had an escape conviction. Samples had six prior escape attempts handled internally by the Department of Corrections. Tr. p. 8; p. 146. Further, the trial court was not prohibited from taking into consideration the fact that the present charge was also for escape. Given the escape history, the trial court did not abuse its discretion. State v. Tucker, 320 S.C. 206, 464 S.E.2d 105 (1995) (finding no abuse of discretion to require defendant remain in shackles based on two prior convictions for escape and a prior conviction for attempted escape, plus an assault while resisting officers in North Carolina. Apparently the shackles were not visible to the jury.).

Finally, even assuming the trial court's ruling was insufficient to justify Samples remaining in shackles, the evidence was so overwhelming that the shackling was harmless beyond a reasonable doubt as it could not have contributed to the verdict. Deck. Samples was an inmate who was found hiding in the Broad River outside the confines of his prison. His co-defendant gave some details of their plan and all evidence indicates that he was an escapee. The guilty verdict was a forgone conclusion.

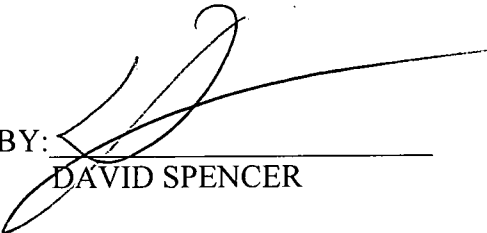
CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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

Respondent proposes the following to be included in the Record on Appeal:

Tr. pp. 42-113; p. 123.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

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Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By:



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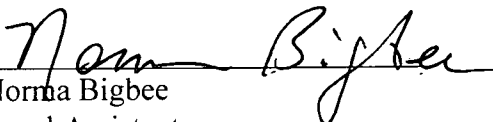
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within **Initial Brief of Respondent and Designation of Matter** on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Carmen Ganjehsani, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211**

I further certify that all parties required by Rule to be served have been served.

This 11th day of October, 2013.


Norma Bigbee
Legal Assistant

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