

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 28 2014

Appeal from Greenwood County

SC Court of Appeals

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL DEMOND GRIFFIN,

APPELLANT

APPELLATE CASE NO. 2012-213602

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Griffin's motion to dismiss due to the unlawful stop, seizure, detention, and arrest because the sheriff's deputies had not been duly qualified to serve as deputy sheriffs pursuant to S.C. Code Section 23-13-10 and 23-13-20?

STATEMENT OF THE CASE

The Greenwood County Grand Jury indicted Daniel Demond Griffin on the charges of armed robbery (AR), assault and battery first degree, and possession of a firearm during the commission of the AR. Two co-defendants, Sergio Quarles and Markus Allen, were indicted on the same charges, but were not tried jointly with Griffin. On May 8, 2012, Griffin proceeded to trial before the Honorable Thomas L. Hughston, Jr. All parties agreed to a bench trial. R. 7, ll. 1 – R. 8, ll. 13. Griffin was represented by Carson M. Henderson, and the state was represented by Andrew M. Hodges. Judge Hughston issued a Verdict Order finding Daniel guilty on the three as indicted on October 12, 2012. R. 377.

Sentencing was held on December 12, 2012 before Judge Hughston. The parties were represented by the same attorneys. Judge Hughston sentenced Griffin to ten years each on the AR and assault and battery first degree, and five years on the gun charge. All sentences were to be served concurrently. December 12, 2012, R. 231, ll. 17 – R. 232, ll. 18. Griffin's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

Quentin Carter testified that on November 30, 2012, he had taken his two year old daughter to Zaxby's to get her food when he noticed that a white Toyota Camry with a pink sticker with "Lander Girl" on it had turned around and started following him. The car followed him to his mother's apartment. When he started to get out of the car, a black male approached him pointing a gun at him and demanded that he "give it up." Carter gave the man \$600 and two bags of marijuana. Carter had never seen the man before. The man beat Carter in the head with the gun before he ran. Carter saw only one man. He turned himself into a ball when the man started hitting him. R. 9, ll. 8 – R. 27, ll. 24.

Maranda Ethridge, sister of Carter, looked out of her window from the apartment when she heard the commotion. She saw two men beating Carter in the head. She called 911. R. 41, ll. 1 – R. 45, ll. 23.

The police put out a BOLO on the car which was shortly spotted at a convenience store by Deputy Marcus Cromer. When he initiated his blue light, they stopped and he told them who he was. Then the Camry took off with Deputy Cromer in pursuit. R. 107, ll. 23 – R. 123, ll. 25. He saw an item thrown from the right side of the vehicle. R. 126, ll. 1 – 13.

The Camry eventually crashed into the vehicle of Deputy Jimmy Boggs. At which time, Deputy Cromer saw three black males run in different directions. R. 127, ll. 1 – R. 128, ll. 22. The three were eventually arrested nearby. R. 162, ll. 1 – R. 164, ll. 25; Verdict Order, p. 2.

When arrested, Marcus Allen cooperated and gave a statement to the deputies. He testified in court as a state's witness against Appellant Griffin. R. 94, ll. 1 – 25; R. 50, ll. 1 – R. 52, ll. 25. 25. Allen, Sergio Quarles, and Griffin were together on November 30, 2012 in

Allen's girlfriend's car which was a white Camry with a pink "Lander Girl" sticker on it. R. 58, ll. 22 - R. 65, ll. 25. They saw Carter, and Griffin allegedly said that Carter was a drug dealer and probably had \$5000 on him. They started following Carter. R. 65, ll. 10 - R. 68, ll. 25.

Allen's testimony was that he and Griffin had guns for protection. R. 72, ll. 1 - R. 74, ll. 7. They followed Carter to an apartment building and pulled into a parking place two spaces down from Carter. R. 70, ll. 1 - R. 72, ll. 7. Allen was the first one out of the car. He pointed the gun at Carter who threw his money on the ground. Griffin then appeared and started hitting Carter with the butt of the gun. Carter put his head down and covered up. Sergio got in the driver's seat and they left. Griffin got the two bags of marijuana. R. 75, ll. 1 - R. 81, ll. 5.

They stopped at the convenience store to get gas when the police car pulled up with blinking lights. Sergio took off in the car. Allen threw his gun out of the right side of the car, and Griffin threw his out of the left side as he was in the back seat. They eventually crashed into a deputy's car. R. 83, ll. 13 - R. 90, ll. 25. All of them ran, but Allen was caught in the woods and arrested. R. 93, ll. 1 - R. 94, ll. 20.

Griffin testified in his own defense that he did not have a gun. R. 210, ll. 1 - 23. Sergio called him from Allen's apartment on the morning of November 30, 2010 looking for marijuana. The three of them left in Allen's girlfriend's white Camry with Sergio driving. R. 197, ll. 14 - R. 202, ll. 25. Allen called "Spunk" (Victim Carter) and Griffin's opinion was that Allen made arrangements to buy marijuana. Griffin had about \$200 on him so he had money to buy. R. 204, ll. 1 - R. 205, ll. 25. They met at the apartment building, and parked

two spaces down from Carter. They could not see Carter due to the car in between. R. 207, ll. 1 – 25.

Allen got out of the Camry, and Griffin heard commotion and someone say “Get out, B.” Sergio got out of the car, and was telling Allen to “leave the man alone; get off; stop.” Sergio got Allen in the car and they left. R. 208, ll. 1 - R. 210, ll. 4.

Griffin gave a statement to the deputies. R. 217, ll. 19 – 25.

Deputy John Long testified that he searched for the guns. He found only Allen’s gun after Allen took them to it. No other gun was found. R. 184, ll. 1 – R. 186, ll. 3; R. 190, ll. 13 – R. 191, ll. 1.

Defense counsel made a motion to dismiss before the state called any law enforcement officers to testify. He presented the judge with a written copy of his motion. R. 98, ll. 11 – R. 99, ll. 17; Court’s Exhibit 1. R. 234. Counsel argued that none of the deputy sheriffs were duly qualified as deputy sheriffs at the time of the arrest. They did not have the power of arrest. Therefore, the arrests were unlawful. There was no evidence that these were citizen’s arrests. R. 109, ll. 1 – 23.

Defense counsel called the Clerk of Court for Greenwood, Ingram Moon, to testify. She testified that there were a number of oaths taken from the deputies sent to her by Judge Frank Addy, Jr.. Judge Addy included an order he signed on September 29, 2011 approving the appointment of the deputies whose oaths were sent to him by Sheriff Tony Davis. She recorded the order on September 30, 2011. R. 99, ll. 18 – R. 101, ll. 25.

Ms. Moon had been Clerk of Court for Greenwood County since 2004, and had worked in the clerk’s office since 1985. She had never seen, prior to September 30, 2013 with Judge Addy’s order, any document from anyone approving someone to be a deputy

sheriff. No bonds had been filed for anyone in the Sheriff's Office and there was no blanket bond. Judge Addy's order was the first she had ever heard of these issues. R. 102, ll. 1 – R. 105, ll. 17.

None of the oaths had been notarized which would be done when a person takes an oath. Sheriff Davis had signed them but there was nothing indicating he was a notary. R. 106, ll. 22 – R. 108, ll. 25.

The state pointed out the last paragraph of Judge Addy's order which stated that his order applied to any future deputies, current deputies, and any past appointed deputies. R. 105, ll. 18 – R. 106, ll. 15; Court's Exhibit 1, Judge Addy's Order.

Each of the deputies who testified after that said he had taken the oath and was bonded. R. 110, ll. 1 – R. 111, ll. 12; R. 117, ll. 23 – R. 118, ll. 25; R. 138, ll. 10 – R. 139, ll. 20; R. 150, ll. 22 – R. 151, ll. 22; R. 160, ll. 24 – R. 162, ll. 3; R. 172, ll. 18 – R. 173, ll. 22; R. 182, ll. 22 – R. 184, ll. 4.

Defense counsel moved for a directed verdict at the close of the state's case based on the lawfulness of the arrest. R. 195, ll. 13 – R. 196, ll. 21. At the close of the sentencing hearing, defense counsel renewed all of his trial motions and moved for a new trial. He stated that he wanted to preserve the record on the issue as it related to the deputies. December 12, 2013, R. 232, ll. 1 – 18.

ARGUMENT

The trial court erred in denying Griffin's motion to dismiss due to the unlawful stop, seizure, detention, and arrest because the sheriff's deputies had not been duly qualified to serve as deputy sheriffs pursuant to S.C. Code Section 23-13-10 and 23-13-20.

S.C. Code Section 23-13-10 provides that "the sheriff may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure."

S.C. Code Section 23-13-20 provides:

Each deputy sheriff shall, **before entering upon the discharge of his duty**, [emphasis added], enter into bond in the sum of one thousand dollars, with sufficient surety, to be approved by the sheriff of the county, conditioned for the faithful performance of his duties and for the payment to the county and to any person of all such damages as they or any of them may sustain by reason of his malfeasance in office or abuse of his discretion. He shall, in addition to the oath of office now prescribed by Section 26, of Article III, of the Constitution, take the following oath (or affirmation) to wit: "I will study the act prescribing my duties, will be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them, will conduct myself at all times with due consideration to all persons and will not be influenced in any matter on account of personal bias or prejudice. So help me, God." The form of such bond shall be approved by the county attorney and, with the oaths, shall be filed with and kept by the clerk of court for the county.

S.C. Code Section 23-13-50 provides that "when duly qualified, a deputy sheriff may perform any and all duties appertaining to the office of his principal."

A deputy serves at the sheriff's pleasure. Botchie v. Dowd, 315 S.C. 126, 432 S.E.2d 458 (1993). A deputy sheriff holds office during the term and at the pleasure of the Sheriff who appointed him. 1974-75 Op. Atty. Gen, No. 4210, p. 255.

State's Exhibit 19, which is the statement given by Griffin on November 30, 2010 (the date of arrest) was written on the letterhead of the Sheriff's Office which clearly shows that Tony Davis was the sheriff at that time. State's Exhibit 19. Supp. R. 1.

In Willis v. Aiken, 203 S.C. 96, 26 S.E.2d 313 (1943), the Supreme Court wrote that "many criteria may be considered, although not regarded as controlling, in determining whether one is a public officer—such as the taking of an oath, giving of a bond, and tenure and duration. The law is this state, already quoted, relating to deputy sheriffs includes all of these requirements. They are required to take the oath of office, give an official bond, and **After** [emphasis added] appointment and qualification they may perform any and all of the duties appertaining to the office of sheriff. The right, authority and duty of a deputy sheriff are thus created by statute."

In State v. Nall, 304 S.C. 332, 404 S.E.2d 202 (Ct. App. 1991), the Court of Appeals held that except when made upon a view of the felony, a private person making an arrest must give reasonable notice of his purpose to arrest and the cause for the arrest, together with a demand that the suspect submit to arrest. What constitutes a reasonable notice depends upon the circumstances of each case.

There was no evidence presented that Griffin's arrest was a citizens' arrest. The deputies presented themselves as law enforcement officers.

The deputies had not been qualified by Sheriff Tony Davis before the arrest of Griffin which was a clear violation of the statutory law. Tony Davis was the sheriff at the time of the arrest. Therefore, the deputies did not have the power of arrest.

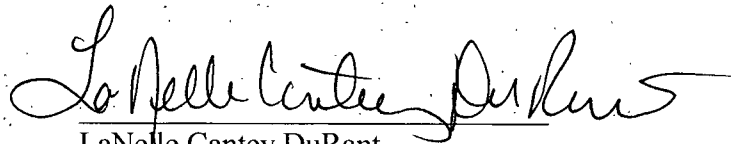
Judge Addy's order qualifying past deputies was not in accordance with the law as the deputies serve office during the tenure of the sheriff who appointed them. Therefore,

each deputy would have to reappointed by each new sheriff. In addition, Judge Addy's order did not cover the issue of each deputy posting bond.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for the entry of an order of dismissal.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant". The signature is written in dark ink and is positioned above the printed name and title.

LaNelle Cantey DuRant
Appellate Defender

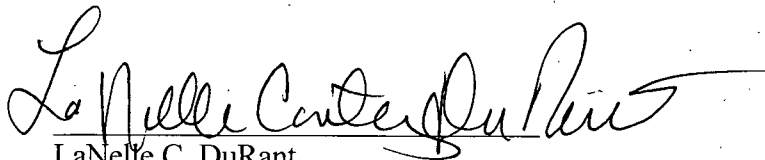
ATTORNEY FOR APPELLANT

This 28th day of March, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 28th, 2014



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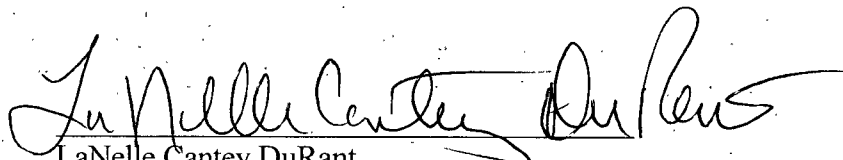
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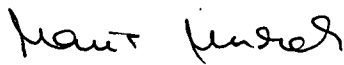
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of March, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of March, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.