

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 13 2014

SC Court of Appeals

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH WALKER

APPELLANT

APPELLATE CASE NO. 2013-000766

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by ruling appellant could not cross-examine Greenville County Police Officer Jonathan Rackley about whether he knew the complainant had an extensive record for convictions of crimes of dishonesty where Rackley testified the case was “cut and dry” based on the complainant’s claims to him, since this cross-examination was relevant to the failure of the police to investigate this case?

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for the offense of attempted murder. R. 249. Hhis case was called to trial on April 1, 2013 before the Honorable C. Victor Pyle, Jr. and a jury. Christopher Lance Sheek represented appellant. L. Mark Moyer was the assistant solicitor. R. 1.

On April 22, 2013, the jury found appellant guilty. R. 244, ll. 16-18. Based upon appellant's past record and the service of life without parole notice Judge Pyle sentenced appellant to life imprisonment without parole. R. 247, ll. 9-11.

This appeals follows.

ARGUMENT

The court erred by ruling appellant could not cross-examine Greenville County Police Officer Jonathan Rackley about whether he knew the complainant had an extensive record for convictions of crimes of dishonesty where Rackley testified the case was “cut and dry” based on the complainant’s claims to him, since this cross-examination was relevant to the failure of the police to investigate this case

Relevant Facts

Tyler Mattress was the alleged victim in this case. He acknowledged on direct examination he had been convicted of about ten burglaries, armed robbery, five counts of grand larceny, and attempted burglary. R. 31, l. 18 – 31, l. 9. Mattress started dating Amanda Ray in July of 2011. Appellant had two children with Ray. Amanda would later testify that appellant was not jealous of Mattress but he did not particularly like his children being around him. R. 33, ll. 4 – 23.

Mattress’ contention was that on July 20, 2011 he was at Amanda’s apartment and “they spent all day laying in bed” while appellant continuously called Amanda. Amanda, according to Mattress, did not answer the phone. Appellant called Amanda from her sister’s house at some point in the afternoon, and Amanda answered that telephone call. Mattress claimed that appellant was threatening Amanda, and he grabbed the phone. Mattress said he told appellant “since you want to fight a girl, come fight me”. R. 36, l. 5 – 37, l. 8.

Mattress claimed in response that appellant said: “I’m going to do something to you.” Mattress said that appellant hung up the phone, and he, Mattress, walked outside. R. 39, ll. 12-16.

Mattress went to Bobby Golden's apartment and got a knife from him. R. 40, ll. 6-23. Mattress testified that when appellant arrived: "I walked up to him – towards him. As he came around the trunk area of the car, I seen he had a gun in his hand. By the time he was getting ready to raise the gun, I took off running up the apartment complex and around the building." R. 41, ll. 13-22. Mattress claimed he did not pull out the knife as he walked towards appellant. R. 41, l. 12 – 42, l. 7.

Mattress said when appellant arrived, Mattress taunted him: "You want to fight a girl, fight me. And then as he came around the truck I seen the gun. And then he shot. And then as I was running off I heard him say, shit real." R. 42, ll. 14-19.

On cross-examination, Mattress admitted he took a knife with him "to fight appellant." He claimed to the police that appellant had shot at him. R. 54, ll. 13-24; r. 8-21.

Amanda Ray testified that when she was talking with appellant on the phone that appellant told her "he was going to crack my skull." Ray explained that she argued with appellant on a regular basis during their relationship "we do that all the time. It's just somebody else was involved this time." R. 96, l. 23 – 97, l. 24.

Ray said that while she was talking with appellant Mattress "just took it [the phone] out of my hand. She recalled that Mattress and appellant then began arguing on the phone. R. 103, ll. 1-10. Ray maintained that both appellant and Mattress were probably upset but she had "never seen either of them with a weapon." R. 108, l. 10 – 109, l. 9.

Greenville Police Officer Jonathan Rackley testified he received a "shots fired" dispatch from the Mallard Cove Apartments on July 20, 2011. R. 116, ll. 7-24. Rackley located Mattress, "the victim," who "came to us in the car. And we got started in speaking

with him.” R. 116, l. 7 – 117, l. 6. The following occurred on direct examination of Officer Rackley:

Q. Okay. Now were you working on July the 20th, 2011?

A. Yes, sir.

Q. Did you get a call for the – for this case?

A. Yes.

Q. And what time did the call go out?

A. 7:15 in the evening.

Q. Okay. What was the nature of the call?

A. Shots fired call.

Q. Okay. And for what location?

A. Mallard Cove – Cove apartments, 15 Villa Road.

Q. Okay. And are those apartments in the City of Greenville?

A. Yes, sir.

Q. And just to give us an idea of where that is, it’s off the Pleasantburg Drive?

A. Yes, near 385.

Q. All right.

A. Off Pleasantburg, behind the old Steak and Ale.

Q. Okay. Now what time did you arrive?

A. 7:25. About ten minutes later after the call went out.

Q. Okay. And what did you find upon your arrival there?

A. I was training another officer. We just – we’d came up to the incident location and **Mr. Mattress, the victim,**

came towards us in the car. And we got out and started speaking with him.

R. 116, l. 7 – 117, l. 8. (emphasis added).

On cross-examination, Rackley acknowledged he did not show Mattress a photo array of the alleged shooters for identification. Instead he accepted his word that appellant was the shooter. R. 123, l. 18 – 124, l. 23. Rackley admitted in his incident report he wrote that based on Mattress' statement he "reported to a local judge and warrants were issued for Mr. Walker's arrest." R. 125, ll. 13-16.

Rackley denied the police ever thought that Mattress was actually the shooter, and that he was attempting to deflect attention from himself onto appellant. Rackley said he considered the case "cut and dry" from the time he talked to Mattress. R. 130, ll. 2-11.

Defense counsel then asked Rackley whether when considered the case "cut and dry" he was aware that Mattress had ten burglary convictions. Rackley said he was not aware of that fact. The solicitor then objected that the alleged victim's prior criminal record was irrelevant. The judge sustained the objection, and counsel was precluded from powerfully showing all else that Rackley was not aware of pertaining to the alleged victim's long record of convictions for crimes of dishonesty. R. 133, ll. 2-11.

Discussion

The scope of cross-examination in South Carolina is broad, and legitimate cross-examination cannot be limited. State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976); State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986); State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

The legitimacy of the thoroughness of the police investigation is fertile grounds for cross-examination. See, State v. Mitchell, 378 S.C. 305, 318, 662 S.E.2d 493, 500, 501 (Ct.App. 2008). Here, the police officer said that the case was “cut and dry” based upon the word of Mattress.

Mattress was in fact a very dishonest person with a long history of criminal convictions for crimes of dishonesty. Defense counsel should have been allowed to continue with his cross-examination since it very effectively conveyed to the jury that the police had relied on the word of not just an apparently a born liar, but a many times convicted one.

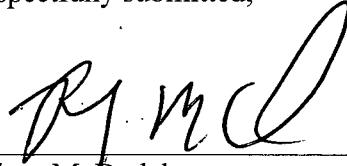
Moreover, the state opened the door to this line of cross-examination by conveying to the jury that Mattress was the victim when it accepted his word without investigation his assertion that appellant had attempted to murder him. When a party introduces evidence about a particular matter – such as a case being “cut and dry” – the other side is entitled to introduce evidence in explanation or rebuttal. See, State v. Jackson, 364 S.C. 329, 336, 613 S.E.2d 374, 377 (2005); State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 398 (1984). Even if this cross-examination was not initially relevant, which it was, this impeachment of Officer Rackley would nonetheless have been permissible given the fact that the state opened the door to this evidence. The failure to investigate what a many times convicted liar alleges because the police officer thought the case is “cut and dry” was very relevant, and the judge erred by ruling otherwise. See State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986)

This case was totally dependant upon the testimony of witness Mattress. Consequently, the error was not harmless.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of June, 2014.

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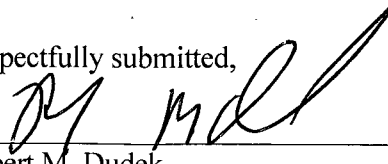
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Walker 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 C. Victor Pyle, Jr., which was held on April 1-2, 2013, 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 Joseph Walker.

Respectfully submitted,


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of June, 2014.

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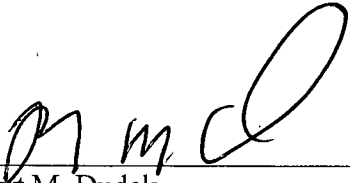
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript;
- (2) True-billed indictment.

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

June 13th, 2014



Robert M. Dudek
Chief Appellate Defender

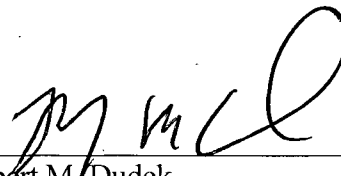
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Attorney for Appellant

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."

June 13, 2014.



Robert M. Dudek
Chief Appellate Defender

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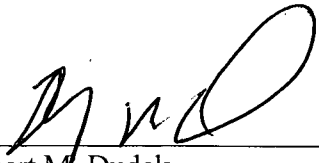
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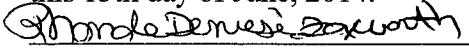
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joseph Walker, #285497 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669 this 13th day of June, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 17, 2021.