

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GERALD RUDELL WILLIAMS,

APPELLANT

APPELLATE CASE # 2013-002304

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to compel disclosure of SLED's investigation of a police officer's alleged misconduct where such information could have been used to impeach the officer when he testified for the State?

STATEMENT OF THE CASE

On July 9, 2013, a Saluda County grand jury indicted appellant Gerald Rudell Williams for three counts of attempted murder. R. 762 – R. 767.

On October 14, 2013, appellant was tried before the Honorable J. Michael Baxley and a jury. R. 1. Ervin J. Maye represented the State. R. 1. Bennett E. Casto and Robert M. Madsen represented appellant. R. 1. The jury convicted appellant. R. 722, l. 23 – 723, l. 17. Judge Baxley sentenced appellant to concurrent terms of twenty years' imprisonment. R. 738, ll. 4 – 11. This appeal follows.

ARGUMENT

The trial court erred in refusing to compel disclosure of SLED's investigation of a police officer's alleged misconduct where such information could have been used to impeach the officer when he testified for the State.

Relevant Facts

Al Jerome Young ("Young") was a drug dealer. R. 270, ll. 18 – 22. He had a prior conviction for giving a false name to law enforcement. R. 270, l. 23 – 271, l. 1. Young testified that in April 2012, he met a man named Oriental James Charley ("Charley") concerning a drug deal. R. 272, ll. 18 – 24. Charley gave him \$26,000.00 in cash. R. 272, l. 25 – 273, l. 1. Young never intended to deliver drugs and agreed with the solicitor that his intention was "to rip [Young] off." R. 273, ll. 2 – 13.

Young testified that on the night of April 13, 2012, he was at home when he heard the dog barking. R. 275, ll. 3 – 9. Also in Young's house were Ycedra Williams ("Ycedra") and Joseph Wrighton ("Joseph"). R. 275, ll. 3 – 22. According to Young, Ycedra "saw two guys running in the yard and that's when she yelled out." R. 275, ll. 3 – 9. Young grabbed his money and .40 caliber pistol and told Ycedra to turn off all the lights. R. 275, ll. 10 – 14. Ycedra called the police. R. 275, ll. 15 – 18. As Joseph walked to the door, "shots rang out." R. 275, l. 19 – 276, l. 5. Young returned fire. R. 276, ll. 1 – 5. When the police arrived, Young told Joseph and Ycedra to tell them he was not there because he had a probation warrant. R. 276, l. 19 – 277, l. 15. Both Ycedra and Joseph admitted pleading guilty to giving false information to police for lying about Young not been being present. R. 237, ll. 3 – 7. R. 258, ll. 1 – 19.

Young claimed he never went outside during the exchange of gunfire, but had fired his weapon in his backyard on a previous occasion. R. 274, ll. 1 – 11. R. 276, ll. 16 – 18. Multiple .40 caliber shell casings were found in the yard. R. 511, l. 9 – 512, l. 5. R. 369, ll. 14 – 21. Three different firearms were collected from the scene. R. 373, l. 17 – 374, l. 8. No one was injured and none of the people in the house identified appellant as one of the shooters.

Ycedra testified that a few days before the gunfight, she saw Charley come to Young's trailer looking for him in a van. R. 221, l. 5 – 222, l. 17. Ycedra saw five people in the van. R. 221, ll. 19 – 24. Appellant was Ycedra's second cousin and she did not identify appellant as being with Charley in the van. R. 217, l. 22 – 218, l. 3. R. 240, ll. 18 – 20.

The night of the gunfight, the police were looking for Charley and his green van. R. 151, l. 18 – 153, l. 9. When the 911 call came, police officer Jerry Grenier ("Grenier") was on patrol and answered the call. R. 296, l. 1 – 297, l. 17. On the way to the call, he noticed a minivan parked on the side of the road. R. 297, l. 18 – 299, l. 13. Officer Grenier and his partner checked the van and called Officer Brett Long ("Long") to ask him to watch the vehicle for them so they could respond to the scene of the shooting. R. 297, l. 18 – 299, l. 13.

Officer Long claimed he found a green colored minivan by the side of the road. R. 323, ll. 5 – 11. He pulled behind the van. R. 324, l. 5 – 326, l. 10. He turned on his bright headlights and his blue lights. R. 324, ll. 14 – 16. He claimed a person who "undoubtedly was laying in the ditch beside the van" stood up and faced him. R. 324, ll. 14 – 18. Officer Long got out of his car and ordered the person to stop and show him their hands. R. 324, ll. 14 – 21. Officer Long claimed the person then got into the passenger side of the van and it slowly drove away. R. 324, l. 14 – 325, l. 17.

Officer Long got in his car to follow the vehicle and notify the other officers. R. 325, ll. 1 – 17. He claimed a camera in his vehicle was not working. R. 325, ll. 1 – 6. Officer Grenier pulled his vehicle in front of the van to box it in. R. 325, ll. 18 – 23. The van stopped. R. 325, ll. 18 – 25. The police claimed they found appellant driving the car and Charley on the passenger side. R. 326, l. 23 – 327, l. 8.

Charley testified for the defense. R. 576, ll. 1 – 10. On direct-examination, Charley testified that he told appellant he would pay him to drive Charley and a man named Rico that night. R. 584, l. 5 – 585, l. 11. Charley told appellant he was “going to see some girls.” R. 585, ll. 23 – 25. Charley never told appellant anything about a shooting, or guns, or his dispute with Young. R. 586, ll. 1 – 13.

While appellant waited in the van, Charley and Rico went to Young’s trailer. R. 590, l. 3 – 591, l. 7. Charley heard Young shout. R. 591, ll. 14 – 19. Young opened the door of the trailer and fired two shots in the air. R. 592, ll. 2 – 6. Charley then fired one shot in the air and his gun jammed. R. 592, ll. 9 – 21. Charley ran. R. 592, ll. 24 – 25. Rico shot at the trailer. R. 592, l. 17 – 18. When Charley got into the van, he said the police pulled up “within five seconds.” R. 593, ll. 16 – 23. Appellant was still in the van when Charley returned. R. 593, ll. 16 – 18.

On cross-examination, the solicitor immediately confronted Charley with the fact that he had already pled guilty but had not yet been sentenced. R. 601, l. 21 – 604, l. 14. Charley responded that he believed he was going to receive a sentence of eight years. R. 604, ll. 4 – 6. The solicitor accused Charley of “double-crossing the State.” R. 604, ll. 15 – 19. Only after the solicitor’s accusations of a double-cross and mentioning his plea deal did Charley recant his direct-examination testimony and implicate appellant in the shooting. R. 605, ll. 13 – 631, l. 24.

During pretrial hearings, appellant moved under Brady v. Maryland, 373 U.S. 83 (1963) and Kyles v. Whitley, 514 U.S. 419 (1995) for any information the solicitor's office had regarding Officer Long. R. 74, l. 10 – 75, l. 4. Defense counsel stated it was their understanding that the solicitor in appellant's trial had filed "some type of formal complaint on Officer Long." R. 74, ll. 20 – 23. The solicitor admitted asking SLED to look into a failure to serve a subpoena. R. 76, l. 25 – 77, l. 17. He told the court he had the investigative file but that it had no "nexus or relevance to this case" and that he had no "information involving anything that would be basically dishonesty." R. 76, l. 25 – 77, l. 17. He submitted the investigative file to the court for review. R. 77, ll. 16 – 17.

After reviewing the file, Judge Baxley found it involved "the failure to issue or serve a subpoena on a confidential informant." R. 79, ll. 2 – 7. He found that the file made no reflection of any criminal charges or criminal activity regarding Officer Long. R. 79, ll. 2 – 7. He found the file was not probative or relevant or likely to be admissible. R. 79, ll. 8 – 17. Judge Baxley ultimately placed the investigative file under seal and made a court's exhibit. R. 104, ll. 4 – 12. This Court ordered the file transported under seal and allowed review by the parties' attorneys and the Court for appellate review. Order, filed January 5, 2015.

Discussion

The trial court erred in not allowing appellant to use the investigative file to impeach Officer Long.¹ “The suppression by the [state] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” Brady, 373 U.S. at 87. See also U.S. Const. amends. V, XIV. Consequently, an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the state; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles, 514 U.S. at 432-42. Brady evidence includes both exculpatory and impeachment evidence. United States v. Bagley, 473 U.S. 667, 676 (1985); Kyles, 514 U.S. at 436-40.

The trial court incorrectly concluded that the file was not relevant or would not be admissible. Appellant could have used the file to impeach Officer Long's credibility. Rule 608(b), SCRE. See also State v. Outlaw, 307 S.C. 177, 414 S.E.2d 147 (1992). Any impeachment would not have been collateral and extrinsic evidence would have been allowed. See Wigmore on Evidence: Impeachment and Rehabilitation, § 5.9. The failure to do so was prejudicial. Officer Long's testimony as one of the officers who found the van and arrested appellant was crucial to the case. It placed appellant at the scene of the crime.

Appellant was not identified by any of the people in the trailer as a shooter. Ycedra did not see appellant with Charley when he came to Young's trailer before the shooting. Charley only implicated appellant after being confronted by the solicitor about his prior plea and

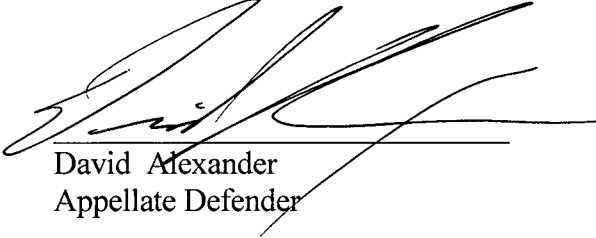
¹ Mindful of the fact that the investigative file remains under seal with this Court and that this case is on review pursuant to Anders v. California, appellant will argue the issue without making any specific references to the contents of the file. The Court's review of the file will provide the Court with the facts necessary to place appellant's legal argument in context.

upcoming sentencing. Under these circumstances, the trial court erred in not allowing disclosure of the file and impeachment and appellant's conviction should be reversed.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and grant a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2015.

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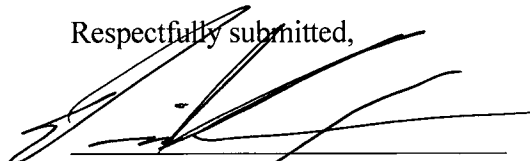
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gerald R. Williams states:

1. He is 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 J. Michael Baxley, which was held on October 14-17, 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 Gerald R. Williams.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2015.

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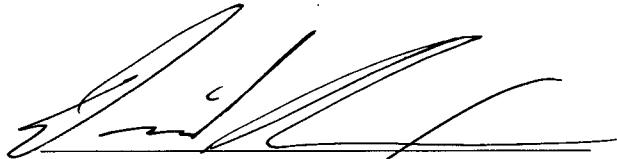
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript;
- (3) Court's Ex. 1, 1-A, 2;
- (4) Court's Ex. 3 (which has been transported and is under seal with this Court)

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

February 27th, 2015



David Alexander
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."

February 27, 2015

A handwritten signature in black ink, appearing to read "David A. Alexander", written over a horizontal line.

David A. Alexander
Appellate Defender

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APPELLATE CASE # 2013-002304

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 Gerald R. Williams, #279073 at McCormick Correctional Institution, this 27th day of February, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of February, 2015.

Beverly Robinson Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.