

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 06 2015
SC Court of Appeals

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT;

V.

TYRELL WOODS,

APPELLANT

APPELLATE CASE NO. 2014-001130

ANDERS BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	13
PETITION TO BE RELIEVED AS COUNSEL	14

TABLE OF AUTHORITIES

Cases

<u>Magazine v. State</u> , 361 S.C. 610, 606 S.E.2d 761 (2004)	12
<u>State v. Baker</u> , Op. No. 27497, ___ S.C. ___, ___ S.E.2d ___, 2015 WL 543493 (Feb. 11, 2015)	11
<u>State v. Green</u> , 269 S.C. 657, 239 S.E.2d 485 (1977)	12
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	11

Other Authorities

S.C. Const. art. I, § 11	11
S.C. Const. art. I, § 14	11
S.C. Const. art. I, § 3	11
U. S. Const. amends. V, XIV	11
U.S. Const. amend. VI	11

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to dismiss appellant's conspiracy charge because he was never served with a warrant or the indictment for this charge?

STATEMENT OF THE CASE

On May 9, 2013, a Marion County grand jury indicted appellant for murder, armed robbery, first degree burglary, attempted murder, a weapons charge, and conspiracy. R. 827. On May 19, 2014, appellant was tried before the Honorable D. Craig Brown and a jury. R. 1. Ed Clements and Dudley Saleeby represented the State. R. 1. Ralph Wilson, Sr., represented appellant's co-defendant, Marco Sanders. R. 1. Scott P. Floyd and William Vick Meetze represented appellant. R. 1. The jury convicted appellant. R. 748, l. 1 – 749, l. 4. Judge Brown sentenced appellant to life imprisonment for murder, life imprisonment for burglary, thirty years' imprisonment for armed robbery, thirty years' imprisonment for attempted murder, five years' imprisonment on the weapons charge, and five years' imprisonment for conspiracy. R. 767, l. 15 – 768, l. 9. The judge set these sentences to run consecutively. R. 768, ll. 11 – 15. This appeal follows.

ARGUMENT

The trial court erred in refusing to dismiss appellant's conspiracy charge because he was never served with a warrant or the indictment for this charge.

Relevant Facts

The Evidence at Trial

Eddie Godbold, Jr. ("Godbold") was a neighbor of the decedent, Sam Rowell ("Rowell"). R. 194, ll. 2 – 5. On July 4, 2012, at approximately 7:00 PM, Godbold passed Rowell on the road. R. 194, ll. 2 – 16. Godbold tried to flag Rowell down because he wanted to borrow a deep fryer. R. 194, ll. 10 – 16. He could not get Rowell's attention. R. 194, ll. 6 – 16. Godbold drove to Marion, ran some errands, and drove back to Rowell's house at approximately 9:00 PM. R. 194, l. 17 – 195, l. 6.

Godbold went to the front door, knocked, but there was no answer. R. 195, ll. 9 – 14. He walked around to the back door and called Rowell's name. R. 195, ll. 9 – 20. He heard Rowell call: "Eddie. They're trying to rob me. Open the door." R. 195, ll. 15 – 20. When Godbold reached for the door, he heard three gunshots. R. 195, ll. 15 – 20. R. 201, ll. 16 – 20.

Godbold ran to the front of the house and hid behind the steps. R. 195, ll. 23 – 25. After waiting for a short period, Godbold got into his car and drove to a neighbor's house and called the police. R. 196, ll. 6 – 198, l. 5. Godbold drove back to the direction of the house, parked, and waited for the police. R. 198, ll. 4 – 17. Godbold never saw who was in Rowell's house or who fired the shots. R. 283, ll. 7 – 10. Even though Godbold did not see who was in the house, he told the police there were two people in the house. R. 231, l. 17 – 232, l. 19. He did not see any vehicles in Rowell's yard other than Rowell's

pickup truck. R. 208, l. 22 – 209, l. 3. On his way to call the police, he saw what he described as a white Cadillac Escalade parked near the house of another neighbor, Lafayette Reed (“Reed”). R. 198, ll. 18 – 23. R. 208, ll. 5 – 18.

Reed lived next door to Rowell. R. 406, ll. 3 – 9. He was standing in his yard when he heard three gunshots. R. 406, ll. 18 – 24. Reed got his gun, got in his car, and drove in the direction of Rowell’s house. R. 406, l. 25 – 407, l. 10. As he approached Rowell’s house, he noticed Godbold’s car parked in the yard. R. 407, ll. 11 – 19. He saw Godbold “kind of squatting down.” R. 407, ll. 11 – 19. A light-colored SUV without its lights on approached Reed’s car. R. 424, ll. 7 – 16. R. 409, ll. 7 – 11. The driver of the car turned on his lights and passed Reed. R. 424, l. 7 – 16. The car ran Reed off the road. R. 408, ll. 8 – 13. On the night of the shooting, Reed told the police he thought the car was either a Cadillac or a Navigator. R. 429, ll. 20 – 22. During his direct-examination testimony, Reed told the jury that he had told the detectives the car “looked like it was an Expedition or a Ford Explorer.” R. 409, ll. 3 – 11. Reed could not tell “what or who was in the car.” R. 409, ll. 12 – 17. R. 411, ll. 6 – 13. Reed tried to follow the vehicle but was unable to keep up with it. R. 413, l. 9 – 416, l. 16.

Reed drove back to another neighbor’s house. R. 416, ll. 20 – 21. Reed, Godbold, and the neighbor drove to Rowell’s house. R. 416, l. 21 – 417, l. 3. Approximately ten people were at Rowell’s house. R. 417, ll. 4 – 10. Reed looked inside the house through the side door, saw Rowell’s feet, and called his name without any response. R. 418, ll. 9 – 20. Reed claimed he did not enter the house. R. 418, ll. 21 – 24. R. 417, ll. 21 – 22.

Godbold testified that Rowell's house was used for parties. R. 204, l. 18 – 206, l. 9. The second officer on the scene agreed with defense counsel that the house was "some kind of a business, a juke joint or a club." R. 251, l. 23 – 252, l. 5. He agreed that inside were tables, chairs, liquor, beer, and cigarettes. R. 252, ll. 3 – 5. There were pool tables, rest rooms, and a bar area. R. 298, ll. 10 – 18. Cases of Crown Royal were found. R. 306, ll. 3 – 6. People would pay a fee to come and participate at parties. R. 205, ll. 4 – 12. Godbold did not remember the club having a function on the day of the shooting. R. 206, ll. 14 – 21. According to Rowell's brother, Rowell also took food and alcohol to sell at Atlantic Beach during Bike Week. R. 376, ll. 10 – 15. R. 382, ll. 4 – 16. Rowell had parties at his house frequently after baseball games. R. 382, l. 20 – 383, l. 9. Rowell rented houses to tenants. R. 383, ll. 15 – 17. Rowell also owned another club that he rented called Sweet Daddy's Sugar Shack. R. 383, l. 20 – 384, l. 6. Sweet Daddy's Sugar Shack was about a quarter of a mile from Rowell's house. R. 384, ll. 11 – 14.

Officer Gregory Pike ("Pike") was the first law enforcement officer to arrive at the scene. R. 218, ll. 5 – 23. He got the call at approximately 9:40 PM. R. 218, ll. 13 – 16. When he arrived, Pike was immediately approached by Godbold. R. 218, ll. 19 – 23. Two other people were with Godbold and they were never identified by Pike. R. 218, l. 24 – 219, l. 5. R. 233, ll. 6 – 10. Officer Pike approached the house with his flashlight. R. 220, l. 11 – 221, l. 11. He found three shell casings. R. 220, ll. 11 – 17. When he entered the house, he found Rowell. R. 221, ll. 12 – 19. He secured the scene and waited for investigators. R. 223, ll. 5 – 17.

Rowell's house was approximately five miles from the intersection of Wahee and Foxworth. R. 243, ll. 5 – 13. Andre Paige ("Paige") knew Rowell and Rowell's brother

("Harold"). R. 358, l. 24 – 359, l. 6. Approximately a month and a half after the shooting, Paige found a Walmart card with Rowell's name on it near the intersection of Foxworth and Wahee. R. 360, ll. 2 – 19. R. 364, ll. 7 – 25. A couple of days later, Paige gave the card to Harold. R. 360, ll. 2 – 8. R. 365, ll. 5 – 16. Page took Harold to the location where he found the card. R. 360, ll. 2 – 8. They found other cards and identification neatly stacked under a stop sign. R. 361, l. 17 – 22. R. 366, l. 24 – 367, l. 9. The grass had been freshly cut. R. 368, ll. 3 – 9. They did not find a wallet. R. 363, ll. 16 – 21. Harold testified that his brother carried a wallet. R. 373, ll. 21 – 22.

Levern Nichols ("Nichols"), who used to work for the police, testified that he saw the defendants in a white Ford Expedition the day before the shooting. R. 443, ll. 6 – 11. Nichols had heard that the police were looking for a white SUV. R. 442, ll. 14 – 25. On direct-examination, Nichols testified that he told the police about seeing the defendants one or two days before he gave a written statement. R. 444, ll. 2 – 4. The date on his written statement was August 23. R. 454, ll. 6 – 11. The defendants had already been arrested by the time gave Nichols gave his written statement. R. 460, l. 19 – 461, l. 2. Their pictures had been in the newspaper and on television. R. 495, ll. 14 – 20. On cross-examination, Nichols equivocated and said he "wasn't asked to write a statement until a week or two later maybe," after he initially told the police about seeing the defendants in the white SUV. R. 461, ll. 3 – 19. On re-direct, Nichols changed his story again that he told the police on the Monday or Tuesday immediately following the day of the shooting. R. 465, ll. 2 – 19. The police officer who testified immediately after Nichols claimed Nichols told him about seeing the defendants in the white SUV a couple of days after the shooting. R. 476, l. 19 – 477, l. 12.

The police learned from appellant's mother that appellant had a girlfriend. R. 478, ll. 10 – 16. The police checked her records and found that she owned a white Ford Expedition. R. 478, ll. 10 – 16. The police obtained a search warrant and searched her car. R. 480, ll. 5 – 17. The police did not find anything of value to the investigation in the car. R. 499, ll. 4 – 6.

Rowell died from a gunshot to the head. R. 276, ll. 1 – 5. R. 270, l. 14 – 271, l. 25. The pathologist described the body as it presented at the autopsy. R. 264, l. 20 – 265, l. 4. Rowell's hands were bound behind his back, tied with brown fiber rope and duct tape. R. 267, ll. 15 – 25. His legs were bound with duct tape. R. 268, ll. 3 – 7. Underwear was duct taped across his mouth as a gag. R. 268, ll. 8 – 24. Rowell had a scrape on his head. R. 269, ll. 1 – 13. A projectile was recovered from Rowell's head. R. 273, ll. 24 – 25. The pathologist described it as a small caliber bullet. R. 281, ll. 14 – 24.

Three 9 mm shell casings were found on the grass outside of the home. R. 299, ll. 14 – 24. R. 300, ll. 5 – 7. Three of Rowell's pants pockets were pulled out. R. 334, ll. 16 – 335, l. 7. Cash was found in one of the pockets. R. 339, l. 23 – 340, l. 1. A cell phone was found in another pocket. R. 340, ll. 5 – 7. No cartridge case was found close to Rowell's body. R. 302, ll. 13 – 15.

Two surveillance cameras were at Rowell's house. R. 302, l. 22 – 303, l. 10. A monitor for the cameras was found near the foot of Rowell's bed. R. 305, ll. 10 – 17. The cords had been cut. R. 305, ll. 21 – 23. A digital video recorder was found on a sofa with its cords cut. R. 325, ll. 2 – 9.

The DVR was initially given to SLED for analysis. R. 41, l. 17 – 482, l. 10. SLED could not view it, but told the Marion County investigator that a local hardware store had the same brand of equipment. R. 481, l. 17 – 482, l. 10. The investigator purchased another video player from the hardware store. R. 482, ll. 1 – 10. Using that new video player, the police were able to review the video. R. 482, ll. 5 – 10. The investigator testified that he recognized the defendants on the video. R. 504, l. 23 – 505, l. 6.

Over sixty items were submitted to SLED for analysis. R. 349, ll. 8 – 14. The crime scene investigator lifted one fingerprint from the front door. R. 303, l. 11 – 304, l. 1. Footwear impressions in the club room area were photographed but not analyzed. R. 307, ll. 13 – 20. R. 350, ll. 21 – 24. Rowell's pillows on his bed had no pillowcases. R. 324, ll. 11 – 13. Crown Royal boxes and cigar boxes were found in pillowcases in another room. R. 324, ll. 14 – 25. A coffee cup was sent for DNA analysis. R. 345, l. 9 – 346, l. 2. The State's fingerprint analysis expert testified that fingerprints found on these items at the scene matched the defendants' fingerprints. R. 626, l. 5 – 632, l. 5. No DNA evidence linked the defendants to the crime.

The State's Failure to Serve the Indictment

Prior to the jury being sworn, the defendants objected to the conspiracy charge because they had not been served with the indictment. R. 165, ll. 8 – 23. The defendants were never served with an arrest warrant for conspiracy. R. 165, ll. 8 – 20. The indictment on conspiracy was a direct indictment. R. 165, ll. 8 – 23. The defendants argued that since they had not been served with the conspiracy indictment, the State should not be allowed to try them on that charge. R. 165, ll. 8 – 25.

The State did not dispute that the defendants had not been served with the indictment. R. 166, l. 21 – 167, l. 6. The defendants received the indictment from the clerk's office. R. 166, ll. 11 – 19. The solicitor only argued that since the attorneys had a copy of the indictment, the defendants were not prejudiced. R. 166, ll. 21 – 167, l. 6. The trial judge noted the objection and deferred ruling. R. 167, ll. 7 – 13. The defendants again raised the issue during the trial to obtain a ruling. R. 662, l. 16 – 663, l. 7. The trial judge denied the motion. R. 664, ll. 8 – 13.

Discussion

The State could not try appellant for conspiracy without serving him with either a warrant or the indictment. “No person may be held to answer for any crime . . . unless on a presentment or indictment of a grand jury of the county where the crime has been committed. . . .” S.C. Const. art. I, § 11. “The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” S.C. Const. art. I, § 3. See also U. S. Const. amends. V, XIV. A criminal defendant has the right “to be informed of the nature and cause of the accusations . . . against him.” U.S. Const. amend. VI. See also S.C. Const. art. I, § 14.

Appellant raised the issue before the jury was sworn. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). “An indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles.” State v. Baker, Op. No. 27497, ___ S.C. ___, ___ S.E.2d ___, 2015 WL 543493 (Feb. 11, 2015). The indictment gives the defendant notice of what he is called upon to answer. Id.

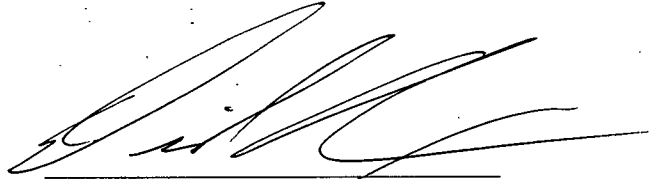
The South Carolina Supreme Court confronted this exact issue in State v. Green, 269 S.C. 657, 239 S.E.2d 485 (1977). But see Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). In Green, the accused “was not served with an arrest warrant or indictment, was not arraigned on the charge for which he was convicted, nor was he ever advised by any official or lawful authority of the charges against him.” Green at 661, 239 S.E.2d at 487. Just as in this case, the State argued that notice to Green through his attorney was sufficient. Id. The Court rejected that argument, stating, “The only notice he could have possible received was through his attorney, which was clearly inadequate.” Id.

The solicitor never argued that appellant had been served on the conspiracy charge. The State’s only argument was that appellant had notice of the charge through his attorney and that he suffered no prejudice. Under Green, the trial judge erred in accepting this argument. Therefore, appellant’s conviction for conspiracy should be reversed.

CONCLUSION

For the foregoing reasons, appellant's conviction and sentence for conspiracy should be reversed with prejudice.

Respectfully submitted,

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2015.

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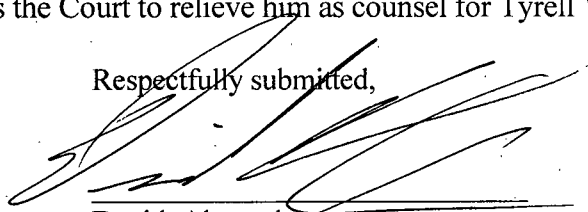
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrell Woods 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 D. Craig Brown, which was held on May 19-22, 2014, 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 Tyrell Woods.

Respectfully submitted,


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2015.

STATE OF SOUTH CAROLINA

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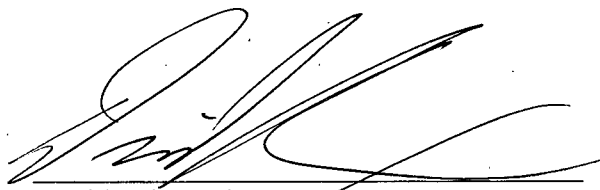
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript (May 19-22, 2014);
- (3) Hearing transcript (November 16, 2012);
- (4) Hearing transcript (May 13, 2013);
- (5) Hearing transcript (May 8, 2014).

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

March 6th, 2015



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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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."

March 6th, 2015



David Alexander
Appellate Defender

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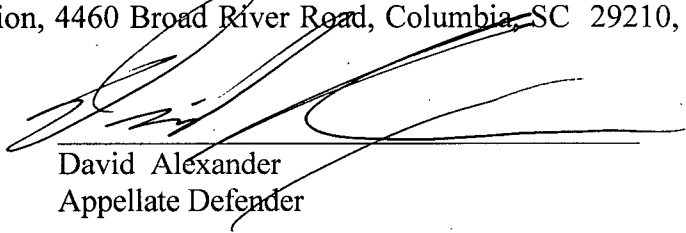
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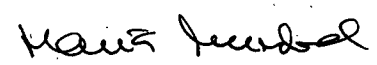
CERTIFICATE OF SERVICE

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 Donald J. Zelenka, 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 Tyrell Woods, #344913 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of March, 2015.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of March, 2015.

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