

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals  
RESPONDENT,

THE STATE,

V.

DANIEL DEMOND GRIFFIN,

APPELLANT

APPELLATE CASE NO. 2012-213602

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Appeal from Greenwood County

Thomas L. Hughston, Jr., Circuit Court Judge

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Opinion No. 5322

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PETITION FOR REHEARING

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The Court of Appeals affirmed the above named appellant's conviction and sentence on June 24, 2015. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, Appellant submits the following:

On appeal, Griffin raised the issue that the trial court erred in denying his 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 South Carolina Code Section 23-13-10 and 23-13-20.

The Court of Appeals affirmed Griffin's convictions and sentences based on the concept that the Greenwood deputies could be considered de facto deputies in spite of their failure to comply with all of the requirements of the statutes cited at S.C. Code Sections 23-13-10 and 23-13-20. The Court wrote that one who was acting as a deputy sheriff under the color of appointment was an officer de facto although the appointment was not made with the formalities required by statute. The Court relied on 80 C.J.S. *Sheriffs and Constables* Section 38 (2015), and the case of Kottman v. Ayer, 34 S.C.L. (3 Strob) 92, 94 )1848). The Supreme Court in Kottman v. Ayer, Id. held that one acting as a deputy was a de facto officer although he failed to file the required oath or failed to sign the necessary bond because the appointment conferred the office.

The Court also relied on State v. McGraw, 35 S.C. 283, 287, 289, 14 S.E.2d 630, 631 (1892) which held although the deputy had been appointed and had acted as a deputy, he had never taken the oath of office and his appointment had not been formally approved. However, he was at least a de facto officer.

The Court of Appeals' reliance on these cases was in error because the Court overlooked the ruling of the Supreme Court in Willis et al v. Aiken County, 203 S.C. 96, 26 S.E.2d 313 (1943). In this case which was decided **after** Kottman v. Ayer, supra, and State v. McGraw, supra, the Supreme Court made it clear that the right, authority, and duty of a deputy sheriff was created by statute. The Supreme Court wrote:

“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 in 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.”

Although Willis is a civil case concerning a worker's compensation issue, the definition is the same. There should be no difference in the requirement or description of a deputy between a civil case and a criminal case especially when a deputy is defined by statute.

The state did not argue that the deputies were de facto deputies but that they were official deputies. It was only the word of the deputies that they had taken an oath and given a bond but no other evidence was presented to confirm that. The Clerk of Court did not have any information about it until after Griffin had been arrested and charged.

The Court of Appeals also disregarded the law by statute. If the Legislature thought a de facto deputy was appropriate, they would have written that into the statute. The Legislature had a reason for the statute. The protection of the public would be one reason as a bond protects the public. A de facto deputy opens the door for imposters acting like deputies to commit crimes and fraud upon the public.

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 also 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. This conflicts with Willis, and a blanket after-the-fact attempt at compliance with the law should be deemed null and void.

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.

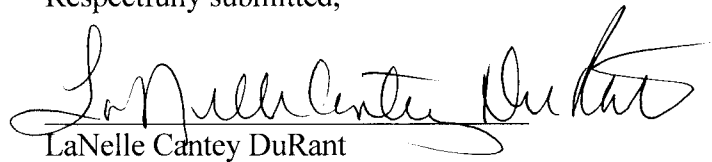
Defense counsel moved for a directed verdict at the close of the state's case based on the lawfulness of the arrest. R. 195, ll. 13 – R. 196, ll. 21. At the close of the sentencing hearing, defense counsel renewed all of his trial motions and moved for a new trial. He stated that he wanted to preserve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

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

WHEREFORE, we respectfully request this Court to reconsider its ruling, and remand Griffin's case for a dismissal of the charges.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

This 8th day of July, 2015.

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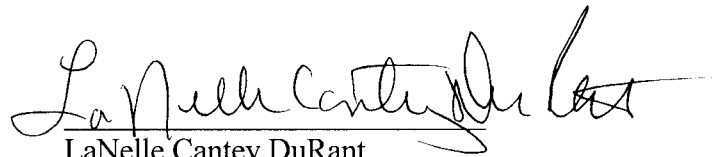
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DANIEL DEMOND GRIFFIN,

APPELLANT

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CERTIFICATE OF SERVICE  
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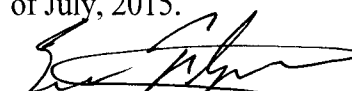
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Daniel Demond Griffin, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 8th day of July, 2015.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day  
of July, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.