

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Thomas L. Hughston, Jr., Circuit Court Judge

Opinion No. 5322 (S.C. Ct. App. filed 6/24/2015)

12-GS-24-00793-00795

THE STATE,

RESPONDENT,

V.

DANIEL DEMOND GRIFFIN,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LANELLE CANTEY DURANT
Appellate Defender

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ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 8/19/2015.

QUESTION PRESENTED

Whether the Court of Appeals correctly affirmed the trial court's denial of 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. The Court of Appeals affirmed Griffin's convictions and sentences in a published opinion on June 24, 2015. State v. Griffin, Op. No. 5322 (Ct. App. filed June 24, 2015). Counsel filed a petition for rehearing which was denied on August 19, 2015. This petition for a writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's denial of 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.

Quentin Carter testified that on November 30, 2010, 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, 2011 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.

Discussion

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:

"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."

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

The Court of Appeals affirmed the trial court's ruling. 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

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. Notably, 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.

Ms. Moon, Clerk of Court for Greenwood County since 2004, 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.

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.

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.

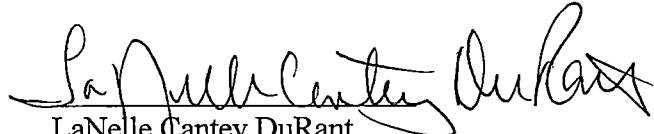
A blanket after-the-fact attempt at compliance with the law should be deemed null and void.

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CONCLUSION

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

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 31st day of August, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
AUG 31 2015
SC Court of Appeals

Certiorari to Greenwood County

Thomas L. Hughston, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

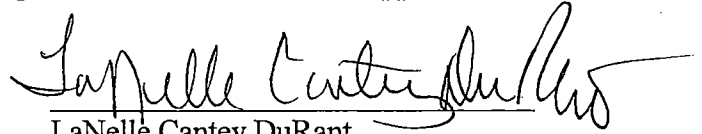
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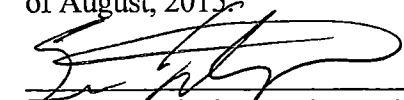
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on J. Benjamin Aplin, Esquire, and the S.C. Court of Appeals this 31st day of August, 2015.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 31st day
of August, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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AUG 31 2015

SC Court of Appeals

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August 31, 2015

J. Benjamin Aplin, Esquire
Assistant Attorney General
Office of the Attorney General
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Re: The State v. Daniel Demond Griffin

Dear Ben:

Enclosed are two copies of the petition for writ of certiorari and the appendix in the above case that I filed with the S.C. Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/lcd

Enclosures

cc: Court of Appeals