

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

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SEP 18 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRE'VAUGHN ZIONTAE JACKSON,

APPELLANT,

APPELLATE CASE NO. 2014-001914

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing hearsay testimony from law enforcement that other alleged eyewitnesses named appellant as the shooter since this hearsay testimony was highly prejudicial, and denied appellant his right to a fair trial on the present charges?

STATEMENT OF THE CASE

Appellant was indicted by the Sumter County Grand Jury for two counts of attempted murder, one count of discharging a firearm into a dwelling, and possession of a weapon during the commission of a violent crime. R. 7, ll. 9-15; R. 408 - 409.

His case was called to trial on April 25, 2014, before the Honorable W. Jeffrey Young, and a jury. Tiffany Butler represented appellant. John P. Meadors was the assistant solicitor. R. 1.

The jury found appellant guilty on each charge. R. 390, ll. 6-23. Judge Young sentenced appellant to thirty years consecutive on each count of attempted murder, and he imposed five year concurrent terms for the possession of a weapon during the commission of a violent crime, and the firing into a dwelling counts. R. 405, ll. 5-21.

This appeal follows.

ARGUMENT

The court erred by allowing hearsay testimony from law enforcement that other alleged eyewitnesses named appellant as the shooter since this hearsay testimony was highly prejudicial, and denied appellant his right to a fair trial on the present charges.

Relevant facts

The shooting in this case arose because on August 29, 2013, Lenard Johnson called Frank Cokley's sister a "bitch." This was two days prior to the shooting. R. 142, l. 19 – 145, l. 7. Frank and Lenard got into a fist fight that day. R. 145, ll. 7-11. Frank opined: "I got the best of him" on that day. R. 146, ll. 1-16.

On Saturday, August 31, 2013 the men fought again over the same incident at 1046 Dibert Street, at the residence of Joe Tomlin. Unfortunately, this time about four other men were involved, and a fist fight turned into a shooting. R. 146, l. 19 – 148, l. 7. When the fight started, Frank said he did not have a gun, and "I didn't see them with none." R. 148, ll. 5-6.

Frank remembered, "by this time I'm just thinking everything is over with so about, I say about twenty minutes later, Keith [Williams] comes in the house and says there's some guys coming down the street. I look out the back window and I see some guys coming off Porter Street, bats, chains and whatnot." R. 146, l. 19 – 149, 21.

Joe Tomlin recalled they were preparing to play spades at Tomlin's house when "someone came in, told us there was a fight, come to find out it was Frank and Lenard." R. 117, l. – 118. l. 23. Joe learned that someone had called the police at

that time. Frank remembered hearing gunshots, and the people inside at the card table dived or tried to drive to the floor. Joe remembered Frank Cokley saying "he was hit. Then a few seconds later, Ms. Ann [said], I'm hit, too. Ms. Welch, said, I'm hit, too, so she collapsed at the front door. Frank had already [fallen] by the kitchen in his own blood..." R. 122, ll. 6-24.

The identity of the shooter(s) was obviously the central issue in this case. Sylvia Welch remembered playing spades with her friends on August 31, 2013 as well. She remembered when the shooting started: "Shots was [were] coming from everywhere. I felt a sting on my leg. I finally made it to the door." R. 164, ll. 14-18. R. 165, ll. 2-3.

Santana Bolden remembered seeing the fight and shooting from her nearby house. R. 214, l. 4 – 216, l. 8. She described the shooter as a black man "chunky, facial hair." She testified under direct examination that she had seen the shooter before "pick someone up from Adult Education." R. 216, ll. 2-25.

Detective Irene Culick investigated the August 31, 2013, shooting. She remembered interviewing Santana Bolden, who gave her a description of a black male about "eighteen to nineteen years old with a chubby face and facial hair." R. 234, l. 12 – 236, l. 6. Culick remembered Bolden told her that she knew this man from adult education. She said she developed appellant as a suspect after talking to Lenard Johnson. She prepared a photographic lineup. R. 236, l. 1 – 239, l. 9. Santana picked appellant out of the lineup. R. 239, l. 10 – 241, l. 24.

The hearsay objections

The state planned to introduce appellant's taped statement through Detective William Lyons. R. 266, l. 17 – 268, l. 19. Assistant solicitor Meadors said he would try and “start and stop” the tape to take out the mention of appellant being in the county jail on other charges, and seemingly other objectionable hearsay.¹ Defense counsel, nonetheless, objected to the obvious hearsay of anyone else implicating appellant through the testimony of Lyons. The tape of the interrogation is on file with this Court. R. 266, l. 17 – 268, l. 1.

Detective Lyons testified he gave appellant his Miranda rights before the interrogation. R. 271, l. 17 – 275, l. 22. The interview was introduced over the objection of appellant. R. 266, l. 17 – 268, l. 1.

Lyons said he was not sure whether or not Keith Williams told him he had seen appellant with a gun that night. R. 281, ll. 6-24. Lyons also testified that he was not sure if Shane Cummings had told him appellant had a gun. R. 282, ll. 8-16. The solicitor had Detective Lyons testify that Lenard Johnson definitely told him he saw appellant shooting on the day of the incident, as, in fact, did Keith Williams. R. 284, ll. 13-25.

The solicitor elicited that these people had been present at the time of the incident, and they named appellant as being involved. R. 284, l. 5 – 286, l. 17. This was all part of the hearsay testimony objected to by defense counsel.

¹ The Record does not disclose if that was actually done because court reporters do not transcribe tapes played to the jury. Thus, all the record discloses is that counsel objected, and the tape was played. R. 266, l. 17 – 267, l. 25; r. 275, ll. 2-22. The portion stating that appellant had been in the county jail on another charge is in the original interrogation listened to by defense counsel.

Lenard Johnson testified that he saw appellant shooting, at the house that day. However, he added that he could not say that appellant was the only person who shot into the house that day. R. 311, ll. 2-7.

The state's final witness was Tarnara Johnson who testified she received a phone call the night before her testimony from appellant at the Sumter-Lee Regional Detention Center. Johnson was the sister of Lenard Johnson. R. 330, ll. 4-17. Ms. Johnson claimed that appellant tried to get her to have Lenard change his testimony. Ms. Johnson said she did not tell Lenard about the phone call which she claimed occurred. R. 331, l. 4 – 332, l. 5.

Discussion

As seen, the judge allowed hearsay evidence from Detective Lyons that other alleged eyewitnesses named appellant as being the shooter. Defense counsel properly objected that such hearsay testimony was inadmissible. See Rule 801(c), SCRE, which defines hearsay as “a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.” See, State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015).

Hearsay is not admissible unless it falls into a recognized exception to the hearsay rule. Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1984). Here, there was no hearsay exception allowing Lyons to put this rank hearsay testimony before the jury. Detective Lyons testified that other people allegedly told him that appellant was the shooter in this case.

The primary basis for the hearsay rule is that the declarant is not present and available for cross-examination. See Orangeburg Department of Social Services v. Schillins, 291 S.C. 477, 354 S.E.2d 388 (1987).

However, the inability to cross-examine the alleged declarant is not the only reason for hearsay testimony not being admissible. When Detective Lyons testified that several people identified appellant as being the shooter, it had the impermissible spurious tendency to lead the jury to believe that other alleged eyewitnesses also have named appellant, thus bolstering the testimony of Detective Lyons. The hearsay testimony that others allegedly told the police that appellant was the shooter in this case was highly prejudicial.

CONCLUSION

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

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

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TRE'VAUGHN ZIONTAE JACKSON,

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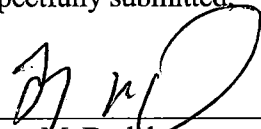
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tre'Vaughn Z. Jackson 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 William Jeffrey Young, which was held on August 28, 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 Tre'Vaughn Z. Jackson.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2015.

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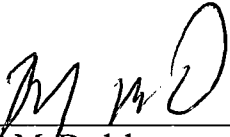
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Entire Trial Transcript (April 25, 2014)
- (3) State's Exhibit No. 1 (CD-Interview of Tre'Vaughn Jackson)

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

September 18th, 2015



Robert M. Dudek
Chief Appellate Defender

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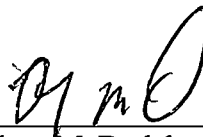
Attorney for Appellant

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."

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September 18, 2015



Robert M. Dudek
Chief Appellate Defender

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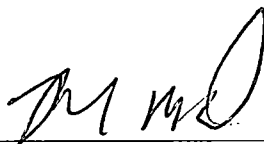
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CERTIFICATE OF SERVICE

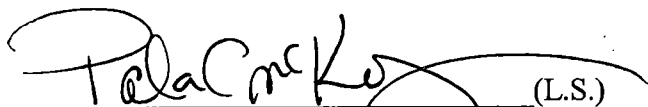
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Tre'Vaughn Z. Jackson, #349787 at Perry Correctional Institution, this 18th day of September, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of September, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022