

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 05 2015

SC Court of Appeals

Appeal from Lancaster County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENECO ANTWON GANSON

APPELLANT

APPELLATE CASE NO. 2014-001402

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing Ms. Thompson, the mother of appellant, to testify for the state that she called the victim, Ms. Howze, and offered to pay for her front door that was damaged when it was kicked in by the burglars which was prejudicial to appellant because it made it appear that he was the burglar?

STATEMENT OF THE CASE

On April 10, 2014, the Lancaster County Grand Jury indicted Beneco A. Ganson on the charge of burglary first degree. On June 24-25, 2014, Ganson proceeded to trial before the Honorable Brian M. Gibbons and a jury. Ganson was represented by Brandon Steen, and the state was represented by Randy Newman. R. 1. The jury returned a verdict of guilty as indicted. Judge Gibbons sentenced Ganson to twenty years. R. 100, ll. 16 – 22. Ganson's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

Beneco Ganson and Rodynka Howze were friends and had a personal relationship. R. 33, ll. 9 – 25. She described him as a friend with benefits. R. 66, ll. 2 – 6. Ms. Howze and her two small children shared a home with Ms. Howze's sister and her son. The evening of December 5, 2013, Ganson visited Ms. Howze in her home. This was the night before the burglary. R. 34, ll. 1 – 18.

Early the next morning, Ganson started texting Ms. Howze asking if she were at home. She did not want to talk so she did not answer him. Then she heard him on the front porch. There was another man with him. She sent him a text saying that she was not at home, but had taken her child to the doctor although she remained at home. R. 34, ll. 19 – R. 35, ll. 25.

She then heard Ganson tell his friend to kick in the front door which the friend did. She took her two children and ran to the back bedroom and put them in the crib. She then returned to the front room and saw the men moving the television and they had their hands on her citizenship class ring. She asked them what they were doing. The men then ran. R. 36, ll. 1 – R. 37, ll. 25.

She called the police and gave them the names of Ganson and the other man who she thought was Shawn Quavos. Shortly after the incident, Ganson sent her a text apologizing for the incident. He told her that he should not have done it. R. 38, ll. 5 – R. 41, ll. 25.

Although she selected Ganson and Quavos from photo lineups, the police dropped the charges against Quavos because his GPS put him at a different location at the time of the incident. Ganson was arrested in Georgia. R. 66, ll. 14 – R. 68, ll. 9.

During the pretrial hearing, the solicitor told the judge that they had an additional witness who was Linda Thompson, the mother of Ganson. Defense counsel related that he had just received notice that she would be a witness and he had not had a chance to speak with her. The solicitor said that she lived in Atlanta but had come that day to the trial. The judge told defense counsel that he would withhold ruling on his objection until counsel could talk to the witness. R. 14, ll. 10 – R. 16, ll. 8.

Following the testimony of several witnesses, the state announced outside the jury that he planned to call Linda Thompson to testify that she called Ms. Howze and offered to pay for the damages from the burglary. The judge told defense counsel that his objection was already in the record. R. 60, ll. 1 – 25.

Linda Thompson testified that Ganson was her oldest child of three. She learned about the burglary incident when her sister, who lived in Lancaster, called her to tell her of hearing about it on a scanner. Ms. Thompson tried to call Ganson with no luck. Then she tried to reach her mother-in-law who gave her some information. She finally called Ms. Howze whom she knew as Porchlee. Porchlee Howze had talked with Ms. Thompson's mother frequently because of the relationship between Ms. Howze and Ganson. R. 62, ll. 8 – R. 63, ll. 21.

Ms. Thompson just asked Ms. Howze what was going on. Ms. Thompson admitted that she offered to pay for the damage to Ms. Howze's front door. Defense counsel asked no questions. R. 63, ll. 22 – R. 64, ll. 11.

In his closing argument, the solicitor argued to the jury:

The Defendant's mother told you she called Ms. Howze to try to cover the cost of any damages. Why would she do that? That is something for you to decide.

R. 79, ll. 20 – 23.

ARGUMENT

The trial court erred in allowing Ms. Thompson, the mother of appellant, to testify for the state that she called the victim, Ms. Howze, and offered to pay for her front door that was damaged when it was kicked in by the burglars which was prejudicial to appellant because it made it appear that he was the burglar.

The Supreme Court ruled in Humphries v. State, 351 S.C. 362, 570 S.E.2d 160, 166 (2002), that a solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. In Simmons v. State, 331 S.C. 333, 503 S.E.2d 164, 166 the Supreme Court held that improper comments by the solicitor in closing argument do not automatically require reversal if they are not prejudicial to the defendant. The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id. at 338, 503 S.E.2d at 166-67.

Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

In State v. McLeod, 330 S.C. 420, 401 S.E.2d 175 (1991), the Supreme Court held that the admission of McLeod's redacted statement, which contained a statement by the questioning officer that McLeod's grandfather felt that whatever happened on Monday (the day the victim disappeared) was his fault, contained improper hearsay and matters "totally irrelevant to McLeod's guilt of the crimes for which he was charged." The Court wrote that the grandfather's statement implied that the grandfather, who did not testify, thought

McLeod had committed the crime. The Court found the cumulative effect of the statement prejudicial to McLeod. The Court reversed for a new trial.

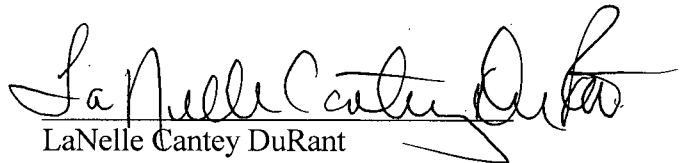
Ms. Thompson's testimony that she offered to pay for the damages to Ms. Howze's front door was highly prejudicial to Ganson. It gave the perception that he was guilty or perhaps had confessed to his mother. It was highly prejudicial for Ganson's mother to present testimony that indicated that she believed he committed this crime. This made it highly probable for a jury to find him guilty if his own mother believed him to be guilty.

For the solicitor to argue this in closing was prejudicial. It added an irrelevant but prejudicial factor to the factors which the jury could consider to decide guilt.

CONCLUSION

Based on the above, Appellant Ganson's conviction and sentence should be reversed, and his case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

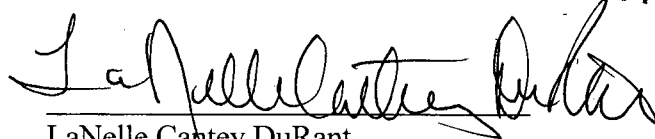
The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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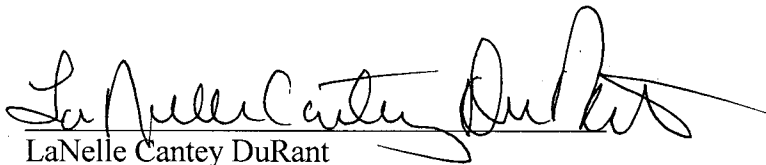
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CERTIFICATE OF SERVICE

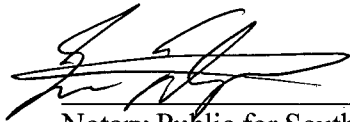
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Benjamin J. Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of August, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of August, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.