

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Steven H. John, Circuit Court Judge

 ORIGINAL

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JUL 27 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARTHAREE JEQUA HINSON

APPELLANT

APPELLATE CASE NO. 2014-002000

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification?

STATEMENT OF THE CASE

In February of 2013, the Chesterfield County Grand Jury indicted Hinson for armed robbery, kidnapping and assault and battery of a high and aggravated nature, indictments #2013-GS-13-0089, 90, 91. On September 15, 2014, Hinson proceeded to jury trial before the Honorable Steven H. John. M.W. Cockrell, III represented Hinson at trial. Kernard Redmond prosecuted the case. The jury returned verdicts of guilty of armed robbery and kidnapping and guilty of the lesser included offense of assault and battery first degree. Judge John sentenced Hinson to twenty one (21) years for armed robbery, a concurrent twenty one (21) years for kidnapping and ten (10) years concurrent for assault and battery first degree. A timely notice of intent to appeal was served on September 17, 2014. this appeal follows.

ARGUMENT

The trial judge erred in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification.

On the evening of October 20, 2012, Christopher Merriman, his girlfriend, Ashlyn Briggs, their two children and a friend, Hannah Gulledge were at Merriman and Briggs' home. (R. p. 55, lines 2-19). As Briggs and Merriman were outside on the porch, two men approached and forced them inside the house at gunpoint. (R. p. 57, line 2 – p. 58, lines 1-8). Once inside the house the men demanded money and marijuana. (R. p. 66, lines 11-13). According to Briggs the men took money, keys, three cell phones and a small amount of jewelry. (R. p. 59, lines 15-24). Merriman testified that the men forced him to load items from the house into Merriman's vehicle. (R. p. 69, line 20 – p. 70, lines 1-17). Merriman believed that a neighbor called the police and the two men fled. (R. p. 71, line 19 – p. 72, lines 1-3; p. 58, line 24 – p. 59, line 1). Merriman described the first man as taller wearing an overall jumpsuit with a hoodie and a black ski mask. (R. p. 71, lines 7-13). Merriman claimed that the taller individual hit him with a gun. (R. p. 67, lines 10-24).

Prior to the robbery, Richard Smith stopped by the house. According to Merriman, Smith came by to pay Merriman back for marijuana he had given Smith earlier. (R. p. 79, lines 1-21). Richard Smith, Richard Martin, Maurice Anderson and Appellant were all arrested in connection with the robbery. On the night of the incident law enforcement recovered two handguns, a wallet, a hat and a mask. (R. p. 103, lines 1-9). One of the guns was registered to Maurice Anderson. (R. p. 104, lines 1-11). The wallet belonged to Richard Martin. (R. p. 103, lines 10-21).

On the night of the incident an employee of the Piggly Wiggly noticed a suspicious black vehicle in the parking lot, noted the tag number and provided the tag number to law enforcement. (R. p. 96, line 22 – p. 99, lines 1-19). The day after the robbery an officer with the Chesterfield Police Department recovered a cell phone at the Piggly Wiggly. (R. p. 92, lines 11-15). The officer recovered coveralls, keys, a mask and a cell phone in a yard close by. (R. p. 91, line 18 – p. 92, lines 1-9).

Law enforcement learned that the tag number reported on the suspicious car at the Piggly Wiggly was registered to a white¹ Dodge Charged owned by Enterprise Rental in Charlotte, North Carolina. (R. pp. 107 – 109). The rental contract was signed by Maurice Anderson on October 12, 2012. (R. p. 108, lines 11-22). Lieutenant Wayne Jordan with the Chesterfield County Sheriff's Department testified that the name Gene Hinson also appeared on the contract. (R. p. 108, lines 3-10). Lieutenant Jordan viewed a video from Enterprise showing the person who rented the car. (R. p. 107, lines 9-15). According to Lieutenant Jordan, Appellant is seen in the video. (R. p. 109, lines 10-21). Although the video was not introduced in evidence, a snapshot from the video was introduced, without objection, as State's Exhibit #8. (R. p. 35, lines 19-25; R. p. 239). Lieutenant Jordan determined that the recovered coveralls were leased by a company in Charlotte where Maurice Anderson worked. (R. p. 113, lines 7-16).

Richard Martin testified as a State's witness. According to Martin, he rode from Charlotte to Chesterfield with appellant and Maurice Anderson to get some weed. (R. p. 155, lines 1-25). Once in Chesterfield they met Richard Smith. (R. p. 158, lines 1-15). After dropping Smith off at the Piggly Wiggly, Martin, Anderson and Appellant smoked some marijuana. (R. p. 157, lines 1-6). Then, according to Martin, he and Appellant

robbed Merriman. (R. p. 157, line 17 – p. 158, 159, 160, 161, lines 1-12). Martin testified that he heard sirens and fled. (R. p. 161, lines 13-25). According to Martin, Smith and Anderson picked him up, Anderson dropped Smith off at his mother's house in Chesterfield and Martin and Anderson returned to Charlotte without Appellant. (R. p. 162, line 1 – p. 163, lines 1-11).

At trial Lieutenant Jordan testified that Appellant admitted² that he was with Smith, Anderson and Martin on the night of the robbery but that it was Smith and Martin who robbed Merriman and left Appellant in the Piggly Wiggly parking lot. (R. p. 117, lines 1-23). At trial Lieutenant Jordan also testified that Merriman, on the night of the robbery, told him that he thought he recognized the voice of one of the robbers as Qua. (R. p. 105, line 21 – p. 106, lines 1-4). Merriman later took a Facebook photo of Appellant to Lieutenant Jordan. (R. p. 109, line 23 – p. 110, lines 1-25).

At trial Merriman testified that he recognized the taller robber's voice as Appellant's. (R. p. 68, line 13 – p. 69, lines 1-18). Before Merriman made the voice identification, the State attempted to lay a proper foundation and asked Merriman how he knew the voice. Merriman testified, "Well, it was from when I was a kid. His grandparents lived right down the road from my grandmother, so they were friends, as well as we were in school at that point in time. I had been around him and seen him on a regular basis." (R. p. 68, lines 7-12). The trial judge erred in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification.

¹ It is unclear why the Piggly Wiggly employee described the car as black.

² The trial court did not conduct a Jackson v. Denno hearing. (R. p. 172, lines 1-12).

First, the trial court in the present case should have conducted a hearing, outside the presence of the jury, to determine the admissibility of the voice identification of Appellant. Rule 104(c) provides as follows:

Hearing of Jury. Hearings on the admissibility of confessions or statements by an accused, and pretrial identifications of an accused shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

If the trial court had conducted a hearing, as required by Rule 104(c), the trial court should have found that the State failed to lay the proper foundation for admission of the voice identification. The State failed to establish that Merriman had a recent opportunity to hear Appellant's voice, only indicating that he recognized the voice from when he was a kid. Merriman did not testify to any unique characteristics that might allow him to identify Appellant's voice. Merriman did not testify that he would recognize the voice if he heard it again. In State v. Heller, 399 S.C. 157, 178, 731 S.E.2d 312, 323 (Ct. App. 2012) the Court of Appeals found no error in the admission of an in-court voice identification because, in part, the solicitor laid a proper foundation before the trial court allowed the voice identification into evidence. The State failed to lay the proper foundation in the present case.

In State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct. App. 1992), the South Carolina Court of Appeals noted that a witnesses' identification of a person by having heard his voice before is legitimate and competent evidence to establish identity in a criminal case. In Smith, however, a dispatcher heard an anonymous caller's voice on May 25, 1987. She described the caller as a white male, over forty years old with a "very country and rugged, scratchy like voice." That voice particularly stuck out in the dispatcher's mind because "it

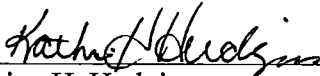
was so country it kind of had a ring to it.” State v. Smith, 307 S.C. at 386, 415 S.E.2d at 415. Less than twenty-four hours later Smith came to the sheriff’s office and told the dispatcher he was there to talk to the detective. The dispatcher immediately recognized Smith’s voice as the anonymous caller.

In State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980) the Court found the identification of the robber’s voice was based on his “distinctive voice” and was properly admitted when that voice was later heard again. In both Smith and Stewart the State laid the proper foundation for the admission of the voice identification. In the present case, the State failed to lay the proper foundation for the admission of the voice identification. The error in admitting the voice identification without the proper foundation requires reversal in light of the limited evidence placing Appellant at the scene of the robbery.

CONCLUSION

Based on the above argument this Court should reverse Appellant's convictions and sentences and remand for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

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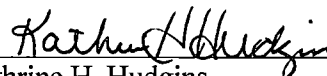
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gartharee Jequa Hinson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Steven H. John, which was held on September 16, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Gartharee Jequa Hinson.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

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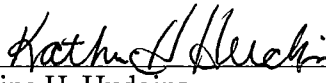
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) Trial transcript;
- (3) State's Exhibit #5 – Facebook Photo;
- (4) State's Exhibit #6 – Evidence Log;
- (5) State's Exhibit #7 – Contract for Rental;
- (6) State's Exhibit #8 – Hinson Photo;
- (7) State's Exhibit #9 – Miranda form;
- (8) State's Exhibit # 10 – DNA analysis;
- (9) Defense Exhibit #1 – Affidavit;
- (10) Defense Exhibit #2 – Court Order;
- (11) Defense Exhibit #3 – Motion;
- (12) Defense Exhibit #4 – Merriman statement.

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

July 27th, 2015



Kathrine H. Hudgins
Appellate Defender

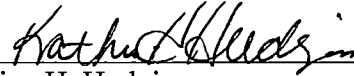
South Carolina Commission on Indigent Defense
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Attorney for Appellant

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."

July 27, 2015



Kathrine H. Hudgins
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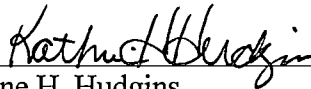
GARTHAREE JEQUA HINSON

APPELLANT

APPELLATE CASE NO. 2014-002000

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 Gartharee Jequa Hinson, #272766 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 27th day of July, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2015.

(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.