

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Marion County

SC Court of Appeals

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCO SIARA SANDERS

APPELLANT

APPELLATE CASE NO. 2014-001201

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow cross examination of a witness about the fact that he was fired from the Marion County Sheriff's Department for issues with controlled substances, when the witness placed Appellant and the co-defendant in a vehicle matching the description of the vehicle seen leaving the crime scene?

STATEMENT OF THE CASE

In May of 2013 the Marion County Grand Jury indicted Sanders, in a six count indictment, for murder, attempted robbery, burglary first degree, attempted murder, possession of a firearm during the commission of a violent crime and conspiracy, indictment #2013-GS-33-256. Count six of the indictment, the conspiracy indictment, was directly presented to the grand jury. On May 19, 2014, Sanders and his co-defendant and nephew, Tyrell Woods proceeded to jury trial before the Honorable D. Craig Brown. Ralph Wilson Senior represented Sanders. Scott Floyd and Vick Meetze represented Woods. E. L. Clements, III and Dudley Saleeby prosecuted the case. The jury returned with verdicts of guilty. Judge Brown sentenced both Sanders and Woods to life imprisonment for murder and burglary first degree, thirty (30) years for armed robbery and attempted murder, five years for conspiracy and the firearm charge. The sentences were ordered to be served consecutively. A timely notice of intent to appeal was served on May 29, 2014. This appeal follows.

STATEMENT OF FACTS

On July 4, 2012, Samuel Rowell was fatally shot in his home. Witnesses testified that Rowell operated a club out of his home for birthday parties and other events. (R. p. 135, line 24 – p. 136, lines 1-12). Inside the home were pool tables, rest rooms, and a bar area. (R. p. 234, lines 10 – 18). On the evening of July 4, 2012, Eddie Godbold, Rowell's neighbor, went to Rowell's house to borrow a deep fryer. (R. p. 130, line 2 – p. 131, lines 1-15). Godbold did not remember the club having a function on the day of the shooting. (R. p. 142, lines. 14 – 21). Godbold testified that he knocked on both the front and back doors and did not get an answer but as he walked by a side door he heard Rowell say, "They're trying to rob me." (R. p. 131, lines 10-18). At that point Godbold heard gunshots so he ran and hid. (R. p. 131, line 18 – p. 132, lines 1-20). Godbold eventually used another neighbor's phone to call 911 and then waited for the police to arrive. (R. pp. 132-134). Godbold testified that when he went to Rowell's home that evening he did not see any other cars, other than Rowell's truck. (R. p. 142, line 6 – p. 143, lines 1-6).

Godbold testified that he did see a white Escalade parked in a driveway close to Rowell's home. (R. p. 143, line 7 – p. 144, lines 1-25). Another neighbor and distant cousin of Rowell, Lafayette Reed, testified that on the evening of the shooting he was almost run off the road by a large light colored SUV. (R. pp. 344 – 245). Detective James Lee with the Marion County Sheriff's Department testified that the co-defendant and appellant's nephew, Tyrell Woods' girlfriend owned a white Expedition. (R. p. 414, lines 7-25). During the investigation of the case, Levern Nichols, JJ, was an employee of the Marion County Sheriff's Department and told Detective Lee that he saw the co-defendant and Appellant in a white SUV the day before Rowell was shot. (R. p. 379, lines 1-25; R. p.

385, lines 9-12). Nichols testified at trial that he saw the co-defendant and Appellant in a white SUV the day before Rowell was shot. (R. pp. 390-393). At the time of trial Nichols was no longer employed with the Sheriff's Department. (R. p. 378, lines 11-13).

Detectives with the Marion County Sheriff's Department, with the help of SLED, were eventually able to view video surveillance from Rowell's home. Detective Neil Rouse with the Marion County Sheriff's Department viewed the video and identified Appellant. (R. p. 516, lines 2-25). Appellant's fingerprints were found on cigar boxes that had been stuffed in a pillow case in Rowell's home. (R. p. 563, line 8 – p. 564, line 1).

ARGUMENT

The trial judge erred in refusing to allow cross examination of a witness about the fact that he was fired from the Marion County Sheriff's Department for issues with controlled substances when the witness placed Appellant and the co-defendant in a vehicle matching the description of the vehicle seen leaving the crime scene.

Counsel for Appellant asked JJ, Levern Nichols, outside of the presence of the jury, why he was no longer with the Marion County Sheriff's Department. (R. p. 385, lines 9-15). Nichols answered, "I was fired for issues with controlled substances." (R. p. 385, line 16). The judge did not allow Appellant to question Nichols in front of the jury about being fired for issues with controlled substances. (R. p. 405, line 15 – p. 406, lines 1-21). The judge stated, "Therefore, pursuant to what I've said on 608 – Rule 608, as well as Rule 609, and pursuant to my reading of State v. Aleksey, again, 343 S.C. 20, 538 S.E.2d 248, my ruling remains the same, but your objection is so noted – is so noted for the record. All right." (R. p. 406, lines 17-21). Counsel for Appellant noted, "Your Honor, just in case I didn't make it clear for my – my objection was twofold. One on the identification, but also on credibility." (R. p. 406, lines 22-24). The trial judge then ruled again that he was allowing the in court identification and was limiting the cross examination of the witness. (R. p. 406, line 25 – p. 407, lines 1-9). The trial judge erred in limiting the cross examination of Nichols.

Appellant should have been allowed to cross examine Nichols about his termination from the Marion County Sheriff's Department due to issues with controlled substances because this evidence constitutes evidence of bias and motive to misrepresent. SCRE Rule 608(c) provides that, "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise

adduced.” In State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001), this Court wrote:

Under Rule 608(c), “Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” This subsection of Rule 608 preserves South Carolina precedent holding that generally, “anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.” State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976) (citing 98 C.J.S. Witnesses § 460).

During cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness. State v. Starnes, 340 S.C. 312, 325, 531 S.E.2d 907, 914 (2000).

In State v. McEachern, 399 S.C. 125, 140-141, 731 S.E.2d 604, 612 (Ct.App. 2012) the South Carolina Court of Appeals wrote:

“Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.” State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct.App.2004) (quoting U.S. v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 469, 83 L.Ed.2d 450 (1984)).

At the time Nichols told Detective Lee that he saw Appellant and the co-defendant in a white SUV the day before the shooting, he was still working with the Marion County Sheriff's Department and knew that investigators were looking for a white SUV. (R. p. 378, line 14 – p. 379, lines 1-4). The fact that Nichols was later fired from the Marion County Sheriff's Department for issues with controlled substances shows that at the time Nichols made the statement implicating Appellant, he needed to try and stay

in the good graces of the investigators. The questioning about the termination provides a motive to misrepresent.

The trial judge's reliance on State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000) is misplaced because the dismissed narcotics indictments against the witness in Aleksey did not involve an act of dishonesty or untruthfulness pursuant to **Rule 608(b)**. The trial judge in the present case should have permitted the cross examination pursuant to **Rule 608(c)**. The Court in Aleksey found the dismissed indictments were not evidence of bias, prejudice or any motive to misrepresent under **Rule 608(c)**. In the present case the termination is evidence of any motive to misrepresent.

The present case is also distinguished from State v. Burgess, 408 S.C. 421, 442, 759 S.E.2d 407, 418 (2014), because the motive to misrepresent in the present case is against Appellant rather than the general disciplinary issues in Burgess that were not against Burgess and happened after his arrest.

The error in limiting the cross examination of Nichols was not harmless. Nichols' testimony was the only evidence placing Appellant in the white SUV. A white SUV was seen leaving Rowell's home after the shooting. The trial judge's error in limiting the cross examination of Nichols requires reversal.

CONCLUSION

Based on the above argument, the conviction and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of July, 2015.

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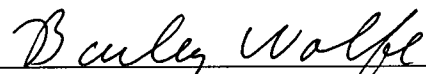
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Kaycie S. Timmons, Esquire, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of July, 2015.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of July, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.