

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William Jeffrey Young, Circuit Court Judge

RECEIVED

DEC 14 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

IRADELLE JAMES,

APPELLANT

APPELLATE CASE NO. 2014-001921

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying defense counsel's motion to exclude Appellant's alleged verbal statement to police, "That's not mine," where there was no indication in the police report that Appellant made a statement to officers at the scene of his arrest, the State did not inform counsel of Appellant's alleged verbal statement until the night before his trial for possession with intent to distribute cocaine base, and the trial judge initially ruled in favor of Appellant but reversed his ruling after the solicitor improperly argued the matter after the judge had already made his ruling?

STATEMENT OF THE CASE

On July 31, 2013, the Edgefield County Grand Jury indicted Appellant for possession with intent to distribute cocaine base. R.165 Appellant's case proceeded to a jury trial on September 3, 2014 before the Honorable W. Jeffrey Young. R. 1. Bennett E. Casto represented Appellant. Ervin May represented the State. R. 1.

The jury found Appellant guilty of the lesser-included offense of possession of cocaine base. R. 155. Judge Young sentenced Appellant to three years' imprisonment. R. 155. Appellant appealed his conviction and sentence. This brief follows.

STATEMENT OF FACTS

According to the State's version of the facts, on May 11, 2013, officers with the Edgefield County Sheriff's Office were dispatched to 300 Yonce Pond Road in Edgefield County, South Carolina, for a domestic disturbance. R. 56, lines 1 – 16. Once officers responded to the scene, Appellant was outside in the roadway and allegedly "shouting and hollering." Appellant also "appear[ed] to be visibly intoxicated." R. 58, line 25 – R. 59, line 1. There were also children and other family members outside of the residence. R. 59, lines 1 – 3.

Officer Richard Oxendine stated that he led Appellant to his patrol vehicle where he talked to Appellant to calm him down. R. 62, lines 3 – 5. The officer advised Appellant that he "was going to pat him down." R. 62, line 16. According to the officer, as he reached to pat Appellant down, "he began spinning and began throwing objects out of his pocket." R. 62, lines 24 – 25. Appellant was then placed under arrest for disorderly conduct. R. 63.

Officer Julian McCrary arrived to the scene as Officer Oxendine was placing handcuffs on Appellant. R. 64. McCrary picked up a tin can off the ground near where Appellant and Oxendine were standing and placed it on the trunk of Oxendine's patrol car. R. 65. Appellant allegedly yelled out "That's not mine," when the tin can was placed on top of the car. The officers opened the tin can and found eight grams of cocaine base. R. 106, lines 22 – 24.

ARGUMENT

The trial judge erred by denying defense counsel's motion to exclude Appellant's alleged verbal statement to police, "That's not mine," where there was no indication in the police report that Appellant made a statement to officers at the scene of his arrest, the State did not inform counsel of Appellant's alleged verbal statement until the night before his trial for possession with intent to distribute cocaine base, and the trial judge initially ruled in favor of Appellant but reversed his ruling after the solicitor improperly argued the matter after the judge had already made his ruling.

Motion to Exclude Appellant's Alleged Verbal Statement

Prior to trial, defense counsel moved to exclude Appellant's alleged verbal statement, "That is not mine," when Officer McCrary placed the tin can which he found on the ground on top of the patrol car. R. 29. Counsel argued:

"There's nothing at all in the police report to indicate that Mr. James made any statements whatsoever to law enforcement, and you know, I found [out] about those last night."

R. 29, lines 9 – 12.

The solicitor responded:

"Your Honor, he said that's not mine, two or three times."

R. 29, lines 14 – 15.

Judge Young ruled that Appellant's statement was suppressed. R. 29, lines 17 – 21.

However, despite the trial judge's ruling, the solicitor gave a summary of the State's evidence, specifically the responding officers' testimony. According to the solicitor:

"Their testimony will be that they saw a tin tossed by the defendant in this case. They picked this tin up and placed it on the trunk lid of an automobile. Before it was opened, before anybody realized - - or before anybody would have

noticed there of what the item was, he immediately began to vigorously say, "That's not mine. That's not mine." Which clued the officers in that they needed to look at this item and it was something he was worried about."

R. 29, line 24 – R. 30, line 7.

After hearing the solicitor's version of the facts, Judge Young stated:

"I'm going to reverse myself. I'm going to allow them to say that he said, "It's not mine," **because if he took the stand, I'm sure that's what he would say anyway, so . . .**"

R. 30, lines 14 – 17. (emphasis added)

Counsel argued that admitting Appellant's alleged verbal statement into evidence "would violate the rules of discovery . . . [the solicitor] provided that information last night."

R. 30, lines 18 – 21. The judge admitted the alleged verbal statement. R. 30.¹

Discussion

A criminal defendant is entitled to a fair trial. U.S. Const. amend. VI; U.S. Const. amend. XIV. Under Rule 5(a) (1) (A), SCRCrimPro, upon the request of the defendant, the State is required to disclose "the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent."

If a party brings to the attention of the court "that a party has failed to comply with this rule, the court may . . . prohibit the party from introducing evidence not disclosed."

¹ Although in Clark v. State, 311 S.C. 314, 428 S.E.2d 870 (1993), the South Carolina Supreme Court held that where a defendant does not make an oral statement in response to interrogation, the State is not required to disclose the statement, in this case, the court initially excluded the verbal statement but later changed his ruling after the solicitor improperly argued the issue after the judge had already ruled. In addition, the judge commented on Appellant testifying at trial, which was also highly improper.

Rule 5 (d) (2), SCRCrimPro. Once the court has heard and ruled on any matter, counsel “shall not attempt to further argue” the matter.” Rule 18 (a), SCRCrimPro.

Here, the trial judge erred by refusing to exclude Appellant’s alleged verbal statement, “That’s not mine.” The trial judge originally ruled in favor of Appellant and excluded the alleged verbal statement. However, the judge changed his ruling only after the solicitor **improperly argued** the matter after the judge had already made his ruling in favor of Appellant. In addition, the judge improperly commented on whether Appellant may testify. See State v. Pierce, 289 S.C. 430, 434, 346 S.E.2d 707, 710 (1986) (finding that the trial judge’s comments outside the presence of the jury on the defendant testifying were “erroneous, improper, and contrary to South Carolina law” and were not harmless error), reversed on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

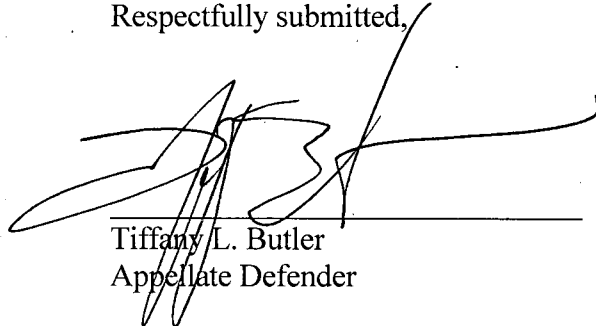
While Appellant’s alleged verbal statement was not made in response to interrogation from the arresting officers, counsel had no knowledge of **any** statements made by Appellant. In fact, there was no indication in the incident report that Appellant said anything to officers on the night of his arrest. Further, there were witnesses outside the residence when officers responded. Had counsel known about Appellant’s alleged verbal statement to police, he could have called one of the witnesses standing outside the home to testify as to whether Appellant actually said, “That’s not mine.”

In addition to having the arresting officers testify that Appellant made the verbal statement denying that the tin can belonged to him, the solicitor argued in closing that the alleged verbal statement was evidence of Appellant’s knowledge of his own guilt. R. 70 – 71. Because the trial judge improperly admitted the alleged verbal statement, defense counsel was unable to prepare a complete defense on Appellant’s behalf.

CONCLUSION

For the reasons argued above, Appellant Iradelle James respectfully requests this Court to reverse his conviction and sentence and remand to the lower court for a new trial.

Respectfully submitted,

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Tiffany L. Butler
Appellate Defender

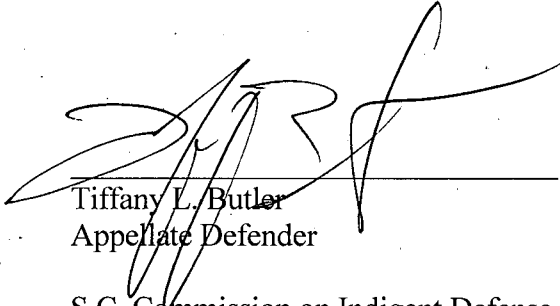
ATTORNEY FOR APPELLANT

This 14th day of December, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

December 14th, 2015

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Tiffany L. Butler
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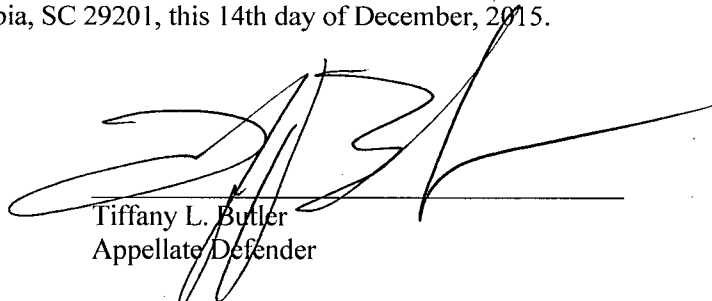
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CERTIFICATE OF SERVICE

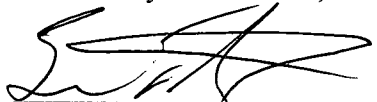
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of December, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of December, 2015.



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