

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 30 2016

SC Court of Appeals

Appeal from Anderson County

R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMIAH CHRISTIAN JOHNSON,

PETITIONER

APPELLATE CASE NO. 2015-001405

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the admission of appellant's non-testifying co-defendants' inculpatory hearsay statements violated appellant's rights under the Confrontation Clause?

STATEMENT OF THE CASE

On November 27, 2012, and December 11, 2012, an Anderson County grand jury indicted appellant for murder, kidnapping, armed robbery, and a related weapons charge. R. 361. On June 22, 2015, appellant was tried before the Honorable R. Scott Sprouse and a jury. R. 1. Rame L. Campbell and Brantly B. Haigler represented the State. R. 1. Gordon A. Senerius represented appellant. R. 1. The jury convicted appellant. R. 10, l. 15 – 345, l. 13. Judge Sprouse sentenced appellant to concurrent terms of thirty years' imprisonment for murder, twenty years' imprisonment for kidnapping, and five years' imprisonment for the weapons charge. R. 351, l. 12 – 352, l. 2. Judge Sprouse sentenced appellant to a consecutive term of ten years' imprisonment for armed robbery. R. 351, l. 12 – 352, l. 2. This appeal follows.

ARGUMENT

The admission of appellant's non-testifying co-defendants' inculpatory hearsay statements violated appellant's rights under the Confrontation Clause.

Factual Background

On the night of July 1, 2012, CJ Patel's ("Patel") family reported him missing to the police. R. 204, ll. 5 – 14. The police originally treated it as a missing person case. R. 204, ll. 15 – 21. By July 3, 2012, using Patel's phone records, the police discovered that Patel had called appellant's co-defendant Kyndra Howell ("Howell") several times the day he disappeared. R. 211, ll. 4 – 24. On July 3, 2012, a landowner reported Patel's abandoned car in a rural area in Anderson County. R. 112, l. 17 – 113, l. 22. The police obtained a search warrant and impounded the car. R. 118, l. 22 – 119, l. 10. At the time, police found no evidence in the car leading them to Patel's location. R. 118, l. 10 – 119, l. 5. The lead investigator, Detective Danny Barton ("Barton"), testified that it looked like somebody attempted to conceal the car. R. 214, ll. 6 – 25.

A call to the police's tip line led them to question Howell about Patel's disappearance. R. 217, l. 2 – 219, l. 14. After this conversation, the police obtained a search warrant for Howell's residence on Jerry Drive in Anderson. R. 219, ll. 15 – 20. They found security cameras and, after speaking with the landlord, were able to find the DVR "in a wall in the closet that couldn't be accessed by the tenant or anybody else other than . . . the landlord." R. 219, l. 21 – 221, l. 9. The State entered the video retrieved from the DVR into evidence. R. 221, l. 20 – 222, l. 23.

The video showed Patel pull into the driveway of the house on Jerry Drive. R. 224, l. 17 – 225, l. 3. Howell gets into Patel's car, they leave, and then return. R. 224, l. 17 –

225, l. 14. Patel walks with Howell into the house. R. 225, ll. 6 – 14. According to Detective Barton, that was the “last time CJ Patel is seen by anyone.” R. 225, ll. 18 – 22. The video also depicts appellant and his co-defendant Zachary Gantt (“Gantt”). R. 225, l. 23 – 227, l. 24. Howell eventually moved Patel’s car behind the house. R. 227, ll. 22 – 24.

Patel’s body was found on July 11, 2012, in a heavily wooded area in Anderson County. R. 126, l. 7 – 127, l. 5. Patel’s body was not found near his car. R. 127, ll. 20 – 22. The police found a 9mm shell casing near the body. R. 130, l. 24 – 131, l. 1. No fingerprints or other forensic evidence was found on the shell casing. R. 134, ll. 13 – 20. The cause of death was a gunshot wound to the head. R. 164, ll. 5 – 7. Co-defendant Gantt led police to Patel’s body. R. 173, l. 25 – 179, l. 18.

Gantt was arrested on July 7, 2012. R. 238, ll. 3 – 5. Appellant was arrested on July 9, 2012. R. 238, ll. 10 – 11. At the time of his arrest, appellant denied any involvement in Patel’s death. R. 242, ll. 12 – 23. Appellant was at Howell’s house playing video games and never saw Patel. R. 242, ll. 12 – 23. Three days later, the police pulled appellant from the jail and interrogated him. R. 198, ll. 4 – 10. R. 354. Claiming they did not have the technological capability in the year 2012, the police did not record their interrogation of appellant. R. 198, ll. 9 – 22. The police did not take notes. R. 55, ll. 19 – 23. The interrogation resulted in a statement typed by the police and purportedly signed by appellant. R. 185, l. 10 – 186, l. 18.

The statement typed by the police describes an attempt by appellant and Gantt to rob Patel. R. 355-56. A man named “Quevo” (later identified as co-defendant Ezra Williams) arrived. R. 355-56. R. 246, ll. 9 – 24. Quevo tortured Patel in an attempt to get the PIN codes for his ATM cards. R. 355-56. Appellant’s plan was to let Patel go, but Quevo took

Patel into the woods and shot him. R. 355-56. Appellant tried to stop Quevo, but it was too late. R. 355-56.

Discussion

Without objection, but erroneously admitted in plain violation of the hearsay rules and the Confrontation Clause, the police were allowed to testify regarding the statements of appellant's co-defendants and another witness. Explaining why the police got a search warrant for the house on Jerry Drive, Detective Barton testified that they "had a very good feeling that something happened at that house based on the conversations, like I said, with Kim and Kyndra, but we didn't know what we were looking for." R. 220, ll. 18 – 23. After describing the video for the jury during its publication, Detective Barton testified that based on the video "and the information we received from Kim Lomax and a couple others, we did sign warrants on Kyndra Howell." R. 234, ll. 6 – 13. The warrant was for kidnapping Patel. R. 234, ll. 14 – 20. Detective Barton testified that the warrant "was based on the information we received that someone is being held hostage in her house." R. 234, ll. 18 – 20. In response to the State's question about why Patel was at the house on Jerry Drive, Detective Barton said, "He was there to buy sex from Kyndra Howell." R. 234, ll. 21 – 24.

Later, when asked if he obtained warrants on appellant and co-defendant Gantt, Detective Barton said he did so "once we had the video and statements from Kim Lomax." R. 235, ll. 15 – 23. Another police officer, J. Todd Owens ("Owens") described Gantt leading them to Patel's body. R. 174, l. 25 – 178, l. 14. Owens testified that, at the scene, Gantt sobbed and admitted to being present when Patel was shot. R. 178, ll. 2 – 14. Owens testified that when he asked Gantt what happened, Gantt said "Quevo shot him," and appellant's hearsay objection was sustained. R. 178, ll. 12 – 16. Owens then testified that

they wanted to interview appellant “about his involvement because of Mr. Gantt’s indication that he was present.” R. 179, ll. 6 – 18.

All of the above-described testimony by Barton and Owens is inadmissible hearsay. These statements were offered for the truth of the matter asserted. SCRE 801(c). The statements from Lomax, co-defendant Howell, and co-defendant Gantt were offered to prove that appellant was at the house when Patel was “held hostage,” that Patel had been lured there by Howell for sex, and that appellant was at the scene when Quevo shot Patel.

These statements were hearsay and not admissible under any hearsay exception. Williamson v. United States, 512 U.S. 594 (1994). In Williamson, a man named Harris was arrested with a car full of cocaine. Id. at 596. Shortly after his arrest, Harris told police the cocaine belonged to Williamson and he was transporting the cocaine to Atlanta for Williamson. Id. at 596-97. During Williamson’s trial, Harris refused to testify. Id. at 597. The government called the police officer to whom Harris had confessed and implicated Williamson. Id. at 597-98. The district court ruled the officer could testify about Harris’ statements under Rule 804(b)(3). Id.

The United States Supreme Court reversed. Id. at 598-605. The Court observed that the “fact that a person is making a broadly self-inculpatory confession does not make more credible the confession’s non-self-inculpatory parts.” Id. at 599. “One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature.” Id. at 599-600. “And when part of the confession is actually self-exculpatory, the generalization on which Rule 804(b)(3) is founded becomes even less applicable.” Id. at 600. “The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory

because it is part of a fuller confession, **and this is especially true when the statement implicates someone else.**” Id. at 601 (emphasis added).

Quoting Lee v. Illinois, 476 U.S. 530, 541 (1986), the Williamson Court stated, “[T]he arrest statements of a codefendant have traditionally been viewed with special suspicion. Due to his strong motivation to implicate the defendant and exonerate himself, a codefendant’s statements about what the defendant said or did are less credible than ordinary hearsay evidence.” Williamson at 601. In concurrence, Justice Scalia noted, “A person arrested in incriminating circumstances has a strong incentive to shift blame or downplay his own role in comparison with that of others, in hopes of receiving a shorter sentence and leniency in exchange for cooperation.” Id. at 607-08 (Scalia, J., concurring). See also Lilly v. Virginia, 527 U.S. 116 (1999).

Our Supreme Court interpreted Rule 804(b)(3), Lilly, and Williamson in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). In Fuller, the Court ruled a third-party accomplice’s confession that implicated the defendant was not admissible. Fuller at 243-45, 523 S.E.2d at 172. The Court stated, “The U.S. Supreme Court has held that third-party statements such as the one involved in this case are inherently unreliable.” Id. Fuller distinguished the Federal Rules of Evidence as containing a “catchall exception” which South Carolina has expressly chosen not to adopt. Id.

Furthermore, admission of statements by appellant’s non-testifying co-defendants violated appellant’s rights under the Confrontation Clause. Bruton v. United States, 391 U.S. 123 (1986). The Confrontation Clause provides that a criminal defendant shall have the right “to be confronted with the witnesses against him.” U.S. Const. amend. VI. See also Crawford v. Washington, 541 U.S. 36, 53-54 (2004). The statements by appellant’s

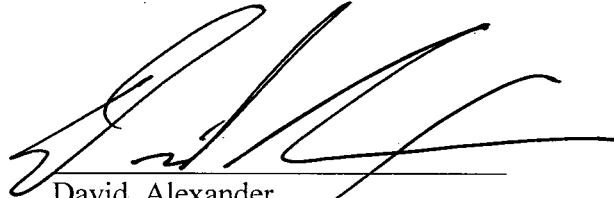
co-defendants were made to the police and therefore clearly testimonial. Davis v. Washington, 547 U.S. 813 (2006).

Appellant had no opportunity to cross-examine Kim Lomax, Howell, or Gantt. Admission of their hearsay statements was plain error and violated appellant's Sixth Amendment right to confront his accusers. The jury deliberated overnight in this case. R. 331, l. 1 – 332, l. 15. The next morning, they sent questions on the definition of murder and the hand of one is the hand of all. R. 337, l. 2 – 343, l. 20. Appellant's purported statement was typed by the police, not recorded, and obtained after appellant spent three days in jail. In this close case, the inadmissible statements prejudiced appellant by placing him at the scene of the crime. This Court should reverse appellant's convictions and remand for a new trial.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2016.

STATE OF SOUTH CAROLINA

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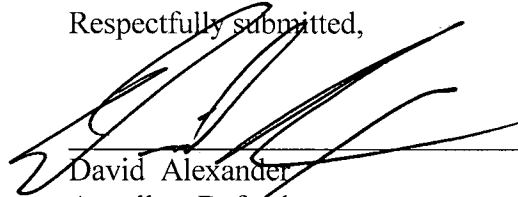
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeremiah Christian Johnson states:

1. He is 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 R. Scott Sprouse, which was held on June 24, 2015, 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 Jeremiah Christian Johnson.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2016.

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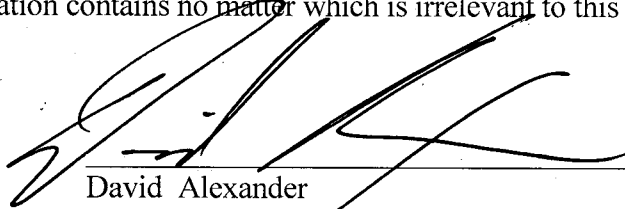
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript dated June 22, 2015
- (3) Trial transcript dated June 23, 2015
- (4) Trial transcript dated June 24, 2015
- (5) State's Ex. 1-6

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

March 30th, 2016



David Alexander
Appellate Defender

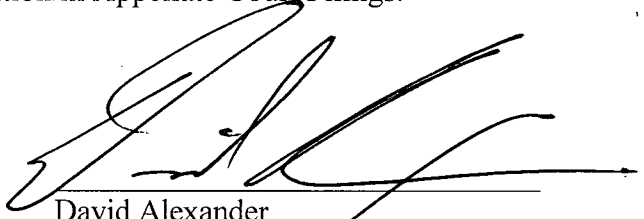
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Attorney for Appellant

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."

March 30, 2016

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

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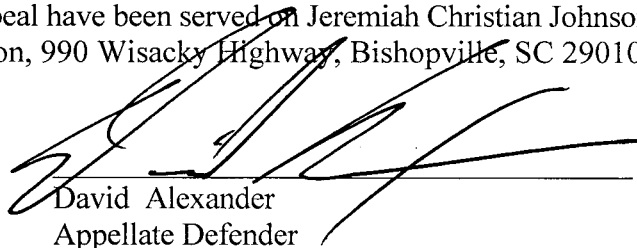
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APPELLATE CASE NO. 2015-001405

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 Donald J. Zelenka, 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 Jeremiah Christian Johnson, #303825 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 30th day of March, 2016.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of March, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.