

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

VAUGHN HILLIARD,

APPELLANT

APPELLATE CASE NO. 2015-001369

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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Rules

Rule 801 (c) SCRE 7

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in overruling defense counsel's hearsay objection to Lt. Tammy Sad testifying to a witness identification of appellant?

STATEMENT OF THE CASE

Appellant was convicted of murder after a jury trial held before the Hon. Kristi L. Harrington on June 8-10, 2015, in Charleston County. A forty (40) year sentence was imposed. Megan Ehrlich, Esq and Michael Loignon, Esq. were the defense attorneys. Culver Kidd, Esq. and Richard Waring, Esq. were the Solicitors.

This appeal follows.

ARGUMENT

The trial court erred in overruling defense counsel's hearsay objection to Lt.

Tammy Sad testifying to a witness identification of appellant.

Appellant was on trial for murder in the shooting death of Troy Carson. The shooting occurred on September 7, 2013, in North Charleston. Earl Gregg testified as a State's witness.

So who all is hanging out on that day, the day that Troy was shot, who all was out there?

A. A bunch of people in the front, a bunch of them.

Q. A bunch of people like how many? Like 4, 5, or 6?

A. More than that like about 10 or 15. That's a day everybody playing card in the back in the front and back.

Q. So there are people out in the back of the apartment and a few out front?

A. Yeah.

Q. All right. So when Charles¹ arrived with his girlfriend that day who was in the front of the apartment building?

A. A bunch of us. All the boys sit in the front on the wall and some into the breezeway. Everybody was sitting down drinking, talking, smoking, having fun.

Q. How did the disagreement between Charles and Kenneth² start?

A. I guess Charles had said something to Kenneth and then I turned around to go use the bathroom on the side of the house and when I come back everybody Charles walk to the gate and knocked Kenneth down on the ground.

Q. So you don't know

A. --- and everybody is still laughing. I ain't know what been going on.

(R. 131, lines 1-25)

A. Kenneth went in this house [indicates] and he come outside. He sat down on the two crates there [indicates] across this fence and then he come back and he shoot Charles through the gate with a .22 with a scope on it and it was in the stomach and Charles buckled.

¹ The victim goes by Charles.

² Appellant goes by Kenneth.

(R. 137, lines 5-9)

Angela Steed, another witness for the state testified about how the whole thing started:

The guy was drinking beer and when he poured the beer out he poured it out like somewhere in here [indicates]. And the guy that was inside the fence was coming around and he seen the beer and he assumed that I guess Troy was the one that threw the beer and him and Troy and the other guy they all started arguing.

Q. So how did he respond when he thought a beer that was thrown out right there?

A. He was upset about it because he was saying even though they had poured the beer out here [indicates] and the fence is here [indicates] he was still saying that that was his property there even though the fence wasn't there and that the city or whoever when they fenced it they should have you know like that still was his property too and he was upset about them pouring the beer out right there.

Q. And how did Troy respond to that?

A. Troy was saying oh you think I'm the one that did it? You think I'm the one that did it? You know he was just back and forth with him about that saying oh you think I'm the one that poured the beer out you know.

Q. So they kind of started jawing back and forth?

A. All three of them, yes.

Q. All three of them?

A. Right.

Q. SO what happened next?

A. They just kept arguing. The guy was standing at the fence and Troy and the other guy was standing here [indicates] and they just kept arguing back and forth whatever, whatever. And then the next thing I noticed the guy and Troy starting walking down towards the back of the fence; Troy on one side and he on the other.

(R. 314, line 16- R. 315, line 23)

Lt. Tammy Sad with the North Charleston Police Department testified earlier in the trial about taking Angela Steed back to the scene of the shooting. She testified that Steed identified appellant as the shooter. Defense counsel objected on grounds of

hearsay and the trial court overruled the objection. (R. 173, lines 5-11) That ruling was in error.

Under Rule 801 (c) SCRE “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” See Player v. Thompson, 259 S.C. 600, 193 S.E. 2d 531 (1972). Lt. Sad also bolstered the testimony of Angela Steed concerning her identification of appellant as the person who shot the victim. Such bolstering is not permitted. State v. Barrett, 299 S.C. 485, 386 S.C. 242 (1989).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2015.

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VAUGHN HILLIARD,

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APPELLATE CASE NO. 2015-001369

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Vaughn Hilliard 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 Kristi Lea Harrington, which was held on June 10, 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 Vaughn Hilliard.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2015.

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APPELLATE CASE NO. 2015-001369

**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) Transcript of June 8-10, 2015.

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

November 13th, 2015

Robert M. Pachak

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

November 13, 2015

Robert M. Pachak

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Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
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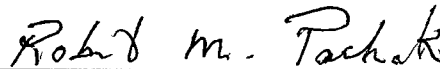
VAUGHN HILLIARD,

APPELLANT

APPELLATE CASE NO. 2015-001369

CERTIFICATE OF SERVICE

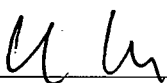
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Vaughn Hilliard, #364310 at Kirkland Correctional Institution, this 13th day of November, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2025.