

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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JUL 19 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMIE GILES,

APPELLANT

APPELLATE CASE NO. 2016-000219

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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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to allow defense counsel to impeach/cross-examine the victim, Dania Kelly, about his reputation in the community for violence and weapon charges because it was essential to determining the credibility of that witness in a case where credibility was the key issue?

STATEMENT OF THE CASE

Appellant was indicted for two (2) counts of attempted murder, possession of a weapon, and discharging a firearm into a vehicle by the Georgetown County Grand jury. He proceeded to a jury trial on February 1-4, 2016, before the Honorable Benjamin H. Culbertson. Appellant was found guilty of one (1) count of assault and battery of a high and aggravated nature (ABHAN), one (1) count of assault and battery in the third degree, possession of a weapon, and discharging a firearm into a vehicle. Respective sentences of twenty (20) years, thirty (30) days, five (5) years, and ten (10) years were imposed. Ronald W. hazard, Esquire was the defense attorney. Richard O. Todd, Jr., Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to allow defense counsel to impeach/cross-examine the victim, Daniea Kelly, about his reputation in the community for violence and weapon charges because it essential to determing the credibility of that witness in a case where credibility was the key issue.

Appellant was accused of shooting at two people in a truck on December 12, 2014. He had a prior altercation with the driver of the truck on July 15, 2014. During pre-trial defense counsel moved for a hearing pursuant to S.C. Code §16-11-410 known as the Protection of Persons and Property Act. He told the court he was specifically relying on S.C. Code §16-11-440(C) which provides as follows:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(R. P. 51, ll.2-21)

Appellant testified at the hearing as did Tavera McCrae, Daniea Kelly, and Investigator Garrett. (R. P. 54, line 13 – p. 135, line 2) The trial court ended up denying the motion stating that he did not think appellant provided sufficient evidence beyond a preponderance of the evidence that he was entitled to immunity under the statute. He did add that he did not know if the State was going to disprove self-defense beyond a reasonable doubt. (R. P. 140, ll. 15-23)

The next day the solicitor announced that the victim, Daniea Kelly, was currently incarcerated with pending charges that he had not yet been convicted of and he did not want defense counsel to be able to ask Kelly about those offenses. He said this would destroy Kelly's character. (R. P. 142, line 14 – p. 143, line 14)

Defense counsel argued there was no limitation on the issue of Kelly's reputation for turbulence and violence in the community. It was relevant for the jury to know that Kelly was arrested for having guns and drugs in his possession. The court could give the jury a limiting instruction on the charge. (R. p. 145, line 10 – p. 146, line 9)

The solicitor came back and cited State v. McCray, 413 S.C. 76,773 S.E.2d 914 (Ct. App. 2015) which held that evidence that the victim fired a gun the night before he was murdered was not so closely connected to the murder to be admitted into evidence. (R. p. 147, line 21 – p. 149, line 5)

After taking some time for research, the trial court granted the State's motion to suppress questioning of the victim regarding his pending charges for drug distribution, drug possession and weapons possession unless the victim opens the door. (R. p. 153, ll.1-11)

Defense counsel said the pending charges should be admitted under Rule 404 (A) (2), SCRE as one of the exceptions to admissibility is the character of a victim when raised by the defendant. He noted a series of cases starting with State v. Moody, 94 S.C. 26, 77 S.E. 713 (1913) and including State v. Franklin, 267 S.C. 240, 226 S.E. 2d 896 (1976) held that the general reputation for turbulence and violence of a putative victim is always for the jury to consider. (R. p. 153, line 15 – p. 154, line 21)

The trial court stated it was going to stay with its ruling based on the fact that the alleged bad acts didn't occur until 10 months after the incident in this case. (R. p. 157, ll. 19-24)

The trial court's ruling in this matter was in error. Rule 404 (a) (2), SCRE provides that "Evidence of a pertinent trait of character of the victim of the crime offered by the accused" is admissible. The notes to the rule cite State v. Boyd, 126, S.C. 300, 119 S.E. 839 (1923) held that the general rule was that in a prosecution for assault and battery with intent to kill, a defendant has the right to introduce evidence attacking the reputation of the prosecuting witness for violence. In accord, State v. Moody, 94 S.C. 26, 77 S.E. 713 (1976)

In State v. Outlaw, which 307 S.C. 177, 414 S.E.2d 147 (1992) the court held that a defendant who takes the stand becomes subject to impeachment like any other witness and may be asked about prior bad acts, not the subject of a conviction, which go to his credibility: however if he denies the acts, he may not be contradicted. (emphasis supplied).

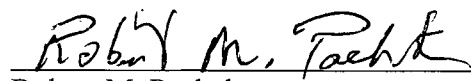
Appellant also had the right to present a defense under the Fourteenth and Sixth Amendments. Crane v. Kentucky, 476 U.S. 683, 106 S. Ct. 2142 (1986); Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038 (1973); Davis v. Alaska, 415 U.S. 308, S. Ct. 1105 (1974).

The trial court's decision to limit defense counsel's cross-examination of the State's witness in this case was in error.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

Handwritten signature of Robert M. Pachak in black ink, written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of July, 2016.

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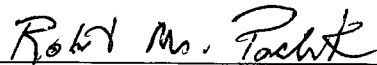
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamie Giles 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 «Judge», which was held on 2/8/2016, 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 Jamie Giles.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 19th day of July, 2016.

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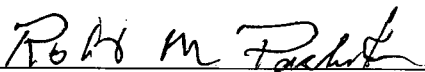
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire trial transcript dated February 1-4, 2016
- (2) True-billed indictment(s);

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

July 19, 2016



Robert M. Pachak
Appellate Defender

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Attorney for Appellant

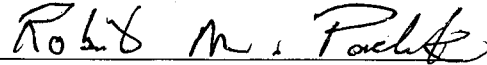
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CERTIFICATE OF COUNSEL

JUL 19 2016

The undersigned certifies that to the best of my ability this Appellate 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 19, 2016



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, 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 Jamie Giles, 324946 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC, 29472, this 6th day of July, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of July, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina
My Commission Expires: March 1, 2026.