

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDY GLENN,

APPELLANT

APPELLATE CASE NO 2016-000083

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing the custodian of records for 911 and dispatch calls for Spartanburg County to testify as to hearsay statements made on a dispatch tape by an investigator with the Spartanburg County Sheriff's Department?

STATEMENT OF THE CASE

In July of 2015, the Spartanburg County Grand Jury indicted Appellant Glenn for armed robbery, indictment #15-GS-42-3366. On January 11, 2016, Glenn proceeded to jury trial before the Honorable J. Derham Cole. Matthew William Shealy represented Glenn at trial. Timi Poulos prosecuted the case. The jury returned a verdict of guilty and Judge Cole sentenced Glenn to life imprisonment pursuant to S.C. code §17-25-45. A timely notice of intent to appeal was served on January 15, 2016. This appeal follows.

ARGUMENT

The trial judge erred in allowing the custodian of records for 911 and dispatch calls for Spartanburg County to testify as to hearsay statements made on a dispatch tape by an investigator with the Spartanburg County Sheriff's Department.

The jury found Appellant Glenn guilty of an armed robbery of a Family Dollar Store in Spartanburg County. At trial Investigator Mark Gaddy with the Spartanburg County Sheriff's Department testified that on the night of the Family Dollar robbery he was assigned to a stakeout operation and was parked directly across the street from the Family Dollar. (R. p. 115, line 11 – p. 116, lines 1-18). The investigator testified that at approximately 8:50 PM he reported, via dispatch, suspicious activity at the Family Dollar Store. (R. p. 116, line 19 – p. 117, 118, lines 1-20). According to the investigator, when the suspicious individual ran out of the store, the investigator drove across the street and behind the store in the same direction as the fleeing individual. (R. p. 119, line 16 – p. 120, lines 1-11). The investigator testified that he drove across the Family Dollar Parking lot and lost sight of the individual for two seconds when the individual turned a corner into an alley. (R. p. 120, lines 10-15). When the investigator drove into the alley, a dark colored car was pulling out. (R. p. 120, lines 15-19). The investigator decided to stop the car by colliding with it. (R. p. 120, line 20 – p. 121, lines 1-24). According to the investigator, the driver of the car was wearing the same clothes as the suspicious person the investigator observed entering and running from the Family Dollar Store. (R. p. 129, lines 20-25).

Investigator John Nix with the Spartanburg County Sheriff's Department testified that he arrived at the Family Dollar Store and searched Appellant after he had been removed from the car. (R. p. 170, line 1 – p. 171, 172, lines 1-21). Investigator Nix discovered a fake gun in Appellant's waistband. (R. p. 172, line 22 – p. 173, lines 1-16). Deputy Anthony Knighten with

the Spartanburg County Sheriff's Department testified that he collected various items from the car including gloves and a green toboggan. (R. p. 198, line 16 – p. 199, lines 1-5). Deputy Knighten also testified that he found 187 packs of cigarettes in the car. (R. p. 196, lines 11-16). The clerk working at the Family Dollar on the night of the robbery testified that the robber asked for the money from the register and cigarettes. (R. p. 88, line 17 – p. 89, lines 1-14).

Appellant testified that on the night of the robbery he pulled over in his car to make a phone call when he saw someone run by his car. (R. pp. 255 -256). Appellant testified that the person who ran by was shedding clothing and dropping items. (R. p. 259, lines 1-18). Immediately after he saw the individual run by, Appellant's car was hit by a SUV and he was rendered unconscious. (R. pp. 257-258). Appellant testified that when he regained consciousness he was face down on the ground handcuffed. (R. pp. 261-262). Appellant testified that officers placed a bag of cigarettes in his car and dressed him in pants, a hoodie and a toboggan found at the scene. (R. pp. 263-265). Appellant also testified that at some point an officer placed the toy gun in his waistband. (R. p. 267, line 23 – p. 268, lines 1-10).

The State called the custodian of records for 911 and dispatch calls for Spartanburg County, Scott Francis, as a witness at trial. (R. p. 151, lines 14 – p. 152, lines 1-9). The State moved to introduce in evidence a compact disc [CD] containing 911 and dispatch calls on the night of the Family Dollar robbery. (R. p. 156, lines 2-3). Appellant stated, "Your Honor, subject to our agreement at the bench¹." (R. p. 156, lines 4-5). The judge admitted the CD containing dispatch and 911 calls as State's Exhibit #1 and the CD was played for the jury. (R. p. 156, line 6 – p. 157, lines 1-7).

¹ The referenced agreement at the bench does not appear in the record. Additionally, there was no objection that the dispatch calls made by law enforcement were inadmissible because the calls contained subjective opinions, judgments and conclusions not subject to the hearsay exceptions found in Rule 803 (6) and (8), SCRE. This may need to be addressed in post- conviction relief.

After the C.D. was played for the jury, the prosecutor asked the witness, “Okay. So, Mr. Francis, based on that particular segment, if you could, tell the jury again approximately what time was the suspect seen with the bag in the pocket walking by and doing a couple of walk-bys in the parking lot.” (R. p. 157, lines 8-12). Appellant immediately objected saying, “Objection, Your Honor. He can’t testify to that. He’s just here to testify as to the information that’s played in order to testify as to the business record that’s played. He can’t testify to all of the stuff –” (R. p. 157, lines 13-16). Appellant noted that it was up to the jury to determine what was said on the C.D. (R. p. 157, lines 18-19). The judge overruled the objection. (R. p. 157, line 20). The prosecutor then asked, “Mr. Francis, again, we just heard what time. He verified the time that Lieutenant Gaddy stated that he saw the suspect doing a couple of walk-bys with the bag in the in the pocket and the dark-colored hoodie and the blue jeans.” (R. p. 157, line 23 – p. 158, line 1). The witness answered that the time was 8:44:44. (R. p. 158, line 6).

The State then asked the witness, “Okay. And approximately what time, according to – according to the call and the way it was cued up – what time was the suspect seen entering the store.” (R. p. 158, lines 7-9). The witness answered, “At 8:45 and seven seconds.” (R. p. 158, line 10). The State then asked the witness, “And approximately what time – if you could, verify when – on this audio it was stated that the suspect was seen coming outa the store with the bag in the hand and running around the corner.” (R. p. 158, line 25 – p. 159, lines 1-3). The witness answered, “So the time would be 2047 and 44 seconds or 8:47 and 44 seconds.” (R. p. 159, lines 4-5). The records custodian admitted that he was not at the Family dollar on the night of the robbery. (R. p. 163, lines 5-8). The trial judge erred in allowing the records custodian to repeat the statements of Investigator Gaddy, heard on the dispatch tape. The testimony from the records custodian constituted inadmissible hearsay.

In State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011), the South Carolina

Supreme Court wrote:

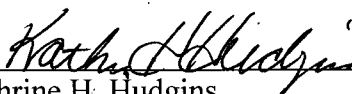
Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. Hearsay is inadmissible except as provided by the South Carolina Rules of Evidence, by other court rule, or by statute. Rule 802, SCRE.

The records custodian’s testimony about statements made on the dispatch tape by Investigator Gaddy was offered in evidence to prove the truth of the matter asserted. The trial judge erred in admitting the hearsay testimony.

Appellant was prejudiced by the improperly admitted hearsay testimony. Timing and the conclusions made by Investigator Gaddy were critically important because Appellant testified that that on the night of the robbery he pulled over in his car near the Family Dollar store to make a phone call when he saw someone run by his car. (R. pp. 255 -256). Appellant testified that the person who ran by was shedding clothing and dropping items. (R. p. 259, lines 1-18). Immediately after he saw the individual run by, Appellant’s car was hit by a SUV and he was rendered unconscious. (R. pp. 257-258). In closing argument the prosecutor emphasized the times derived from the dispatch and 911 calls and even presented the jury with a chart of the times. (R. p. 327, line 21 – p. 328, lines 1-22). Appellant was prejudiced by the improperly admitted hearsay.

CONCLUSION

Based on the above argument this court should reverse Appellant's convictions and sentence and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2016.

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."

August 28, 2016.



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THE STATE,

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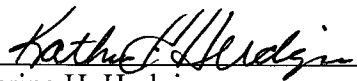
RANDY GLENN,

APPELLANT

APPELLATE CASE NO. 2016-000083

CERTIFICATE OF SERVICE

The undersigned 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 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 have been served on Randy Glenn, #140243, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 28th day of August, 2016.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of August, 2016.

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