

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
Roger M. Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEON AMOS JASON JAMES,

APPELLANT

APPELLATE CASE NO 2016-001155

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in permitting the state to introduce evidence of Appellant's flight as consciousness of guilt because the evidence diluted the state's burden of proof in violation of Appellant's rights under the federal and state constitutions?

STATEMENT OF THE CASE

During its October 2014 term, a Bamberg County grand jury indicated Appellant for armed robbery (2014-GS-05-202) and entering a bank with intent to steal (2014-GS-05-204). R. 573-574; R. 576-577. The state, represented by David Miller, Jack Hammack, and Wilder Harte, called the case for trial before the Honorable Roger M. Young and a jury on November 30, 2015. R. 75. Janek Kazmierski and Chris Wilson represented Appellant. R. 75. The jury found Appellant guilty as charged. R. 550, ll. 9-19. Pursuant to the state's notice of intent to seek life without parole under the recidivist statute, Judge Young sentenced Appellant to life imprisonment without the possibility of parole on both charges. R. 554, l. 12 – R. 555, l. 5; R. 557, ll. 2-4; R. 575; R. 578.

On February 17, 2016 and May 26, 2016, Appellant, through trial counsel, served his notice of appeal.¹ This brief follows.

¹ On June 19, 2016, this Court granted Appellant's motion to enlarge the time for filing the notice of appeal. Appellant had served his notice of appeal on February 17, 2016, and attempted to file it with this Court. Subsequently, Appellant learned the notice had not been received due to a scrivener's error in the address line. Appellant promptly filed a second notice of appeal and motion to enlarge time.

STATEMENT OF FACTS

At noon on June 5, 2014, Appellant entered Enterprise Bank in Denmark to open an account. R. 234, l. 25 – R. 235, ll. 5. He was told to return after 1 p.m. to speak with a supervisor. R. 235, ll. 6-10. Appellant returned to the bank around 1 p.m. R. 237, ll. 1-9; R. 240, ll. 20-25. Appellant met with a supervisor regarding his desire to open an account. R. 241, ll. 4-9. Appellant presented his identification to the supervisor, but he was unable to open an account because he did not have his social security card with him. R. 241, ll. 13-19; R. 245, ll. 11-20; R. 246, ll. 2-4. After asking how he could get a replacement social security card, Appellant left the bank. R. 241, ll. 19-24. The bank's video surveillance system recorded Appellant entering the bank to open an account. R. 242, ll. 4-15.

Betty Wilson was driving from Columbia to Bamberg on June 5, 2014. R. 214, l. 24 – R. 215, l. 2. She noticed "individuals running into the bank" from a car "on the side of the bank." R. 215, ll. 1-8. She thought this was "odd." R. 215, ll. 2-4. The car was "a gray-looking Grand Am." R. 216, ll. 8-10. Curious, Wilson circled the block, but the car was no longer there. R. 216, ll. 11-23; R. 217, ll. 13-17. When she returned to the bank, she saw "some individuals running into the bank very quick, rapidly." R. 217, ll. 1-2. After a few minutes, the individuals exited the bank, "made a left to go behind the side of the bank" to "a wooded area." R. 217, ll. 3-12. Wilson contacted the police with her observations, including a description of the car. R. 217, l. 20 – R. 218, l. 4. Wilson could not identify anyone in the car or the individuals running into and out of the bank. R. 218, ll. 5-12.

At 1:26 p.m., the bank was robbed. R. 220, ll. 7-20; R. 234, ll. 22-24; R. 243, l. 19 – R. 244, l. 7; R. 250, ll. 3-6. During the robbery, one of the tellers gave the men the money from the

drawers. R. 251, l. 15 – R. 252, l. 8. The bank's surveillance system also recorded the robbery by two masked men. R. 222, ll. 3-25.

Around 1:30 p.m., the Olar Police Chief, James Walley, heard a description of a car that may have been involved in the bank robbery broadcast over the police radio. R. 257, l. 14 – R. 258, l. 3. He parked on the side of the road "to see if the vehicle might come through Olar." R. 258, ll. 4-6. Approximately fifteen minutes later, he saw a car fitting the description pass by. R. 258, ll. 7-9. Walley followed the car, and activated his blue lights when the car ran a stop sign. R. 258, ll. 14-17. Arriving at a dead end, the car drove off-road until it hit some trees. R. 258, l. 21 – R. 259, l. 4. When the car crashed, Walley saw the door open and one person exit. R. 259, l. 24 – R. 260, l. 1. He approached the car, but there were no other occupants. R. 259, ll. 5-9. Renee Greathouse identified the car involved in the wreck as being registered to her. R. 254, ll. 9-16. However, she claimed Appellant had it on June 5, 2014. R. 254, ll. 21.

From the interior of the wrecked car and around it, the police found a ball cap, a rag, a piece of a money wrapper, a shirt, black sandals, two South Carolina identification cards, a BB gun, a Burger King receipt, a wallet with a North Carolina identification card, a gas station receipt, a duffle bag "with several bills with red stains." R. 263, ll. 18-22; R. 264, ll. 20-22; R. 265, ll. 5-18; R. 266, ll. 4-17; R. 278, ll. 4-10; R. 278, ll. 18-25; R. 279, ll. 8-16; R. 280, ll. 1-5; R. 280, ll. 9-15. One of the South Carolina identification cards belonged to Homer James. R. 281, ll. 19-25. The other South Carolina identification card belonged to Lewis Garvin. R. 282, ll. 1-2. The police also found a South Carolina identification card for Appellant. R. 282, ll. 5-8. Additionally, the police found an ATM card for Appellant and a social security card for Garvin in the car. R. 282, ll. 13-16. Inside the duffle bag, the police found \$5,781. R. 285, ll. 15-17.

The glove box contained \$260, and in the passenger area was \$140. R. 285, ll. 18-21. The North Carolina identification card belonged to Darrell Demont Lassiter. R. 289, ll. 8-14.

On the night of June 6, 2014, and into the morning of June 7, 2014, Appellant, Homer James, and Lewis Garvin were arrested and charged with robbing the Enterprise Bank. R. 309, ll. 22 – R. 310, l. 1; R. 311, ll. 8-18; R. 312, ll. 14-17. The police never even looked for Darrell Lassiter. R. 389, l. 7 – R. 390, l. 6. However, he testified at Appellant's trial. He claimed he lost his driver's license during Memorial Day weekend in 2014 in Myrtle Beach. R. 426, l. 21-25. He also claimed that on the day of the bank robbery, he was in North Carolina applying for a loan. R. 428, l. 2-19.

Garvin pled guilty to armed robbery, entering a bank with intent to steal, and criminal conspiracy on the Monday prior to Appellant's trial. R. 457, ll. 10-20. At the time of Appellant's trial, he was waiting to be sentenced. R. 457, ll. 21-23. Garvin told the jurors that he could not remember much from June 2014 because he was drinking and using prescription medication. R. 459, ll. 6-11. He claimed he rode to Denmark with Appellant. R. 459, ll. 21-25. He and Appellant knew nothing about a bank robbery. R. 461, ll. 7-17. According to Garvin, another guy in the car forced him at gunpoint to participate in the bank robbery. R. 469, ll. 6-15; R. 477, ll. 10-18; R. 477, l. 22 – R. 478, l. 3. He remembered the police chasing the car, the car wreck, and running from the car. R. 470, l. 19 – R. 471, l. 13.

ARGUMENT

The trial judge erred in permitting the state to introduce evidence of Appellant's flight as consciousness of guilt because the evidence diluted the state's burden of proof in violation of Appellant's rights under the federal and state constitutions.

Relevant facts

In his opening statement, the solicitor told the jurors the "circumstances of how [Appellant] was arrested and what he was doing when he was arrested absolutely are evidence of his guilt." R. 206, ll. 5-7. While the solicitor conceded the fact that he was arrested was not evidence of his guilt, the solicitor argued to the jury the circumstances of his arrest were still pieces of evidence the jurors could use to find Appellant guilty. R. 206, ll. 5-9.

As the solicitor had promised in his opening statement, he introduced evidence of Appellant's arrest through the testimony of police. During the testimony of Eddie Williams, a member of the Bamberg County Sheriff's Office, Appellant objected to the state presenting evidence of flight. R. 299, ll. 13-15. According to Williams, on June 6, 2014, he was in the Govan area to follow-up on a complaint at a specific residence. R. 294, l. 12 – R. 295, l. 14. When he went to the residence, he found nothing suspicious. R. 295, ll. 13-14. Thereafter, he stopped by the local fire station, which was nearby, where many people had gathered. R. 296, ll. 4-11. When Williams asked if anyone had seen any suspicious persons, the crowd responded they had not. R. 296, ll. 7-20; R. 317, ll. 16-21. However, someone in the crowd suggested Williams check into the mobile home behind the landfill. R. 296, ll. 20-24; R. 317, ll. 16-21. When Williams arrived at the mobile home, a gentleman approached him. R. 297, ll. 10-17. The man was acting strangely, prompting Williams to draw his weapon. R. 297, ll. 18-24. The man then ran through some kudzu. R. 298, ll. 11-12. Williams did not give chase. R. 298, ll. 14-16.

Williams returned to the fire department where he learned that someone had run across a nearby field. R. 298, ll. 15-16; R. 299, ll. 6-9; R. 318, ll. 8-17. Williams was unable to find the person. R. 299, ll. 10-12. At this point, defense counsel objected to the state “going into matters of flight as evidence of ... guilt.” R. 299, ll. 22-25. Defense counsel explained that in order to introduce evidence of flight, the state would “have to show a knowledge of guilt and an attempt to avoid arrest because of that knowledge of guilt.” R. 300, ll. 6-8. Defense counsel argued the evidence would “allow the jury to form an improper conclusion that just because he avoided contact with law enforcement, he was guilty of participating in this armed robbery.” R. 300, ll. 13-16. He noted the extreme prejudice that would result from such a conclusion. R. 300, ll. 17-18. Defense counsel reiterated that Appellant’s defense was duress – he was “forced at gunpoint to be involved in this.” R. 300, ll. 19-23. Additionally, defense counsel explained that Appellant had no obligation to cooperate with the police or respond when approached. R. 300, l. 23 – R. 301, l. 3. Thus, defense counsel argued, “his lack of contact or his avoidance of law enforcement [was] not evidence of guilt ... or conclusive evidence of guilt enough to be able to present to this jury and allow them to draw that conclusion and jump from his avoidance of law enforcement to he must be guilty of being involved in robbing this bank.” R. 301, ll. 4-11.

According to the state, the objection was “too late” because the state presented evidence of flight by presenting a witness who stated he ran from the car when it wrecked. R. 301, ll. 13-17. The state conceded the case law forbade a jury instruction that flight was evidence of guilt, but the state maintained such evidence was proper and an inference could be argued to the jury. R. 301, ll. 18-21. In fact, the state intended to argue Appellant’s flight permitted the jury to draw an inference of guilt. R. 301, ll. 21-22. The state posited that determining whether Appellant fled due to fright or guilt was for the jury to decide. R. 302, ll. 1-4.

Defense counsel countered that the evidence of Appellant leaving the scene of the car wreck was a “much, much different situation” from the foot chase to be described by Williams and other witnesses because Appellant was fleeing from the men who had forced him to participate in a bank robbery when he escaped from the wrecked car. R. 303, ll. 4-12.

Judge Young agreed that he would not instruct the jury that evidence of flight permitted an inference of guilt, but he agreed with the state that such evidence was admissible. R. 303, ll. 13-18. According to the judge, “in circumstances like this, it is part of almost *res gestae*, part of what happened.” R. 303, ll. 15-16. Further, he concluded that the state could argue that flight permitted an inference of guilt. R. 303, ll. 17-18.

After the judge’s ruling, Williams resumed his testimony of describing how Appellant and the bank robbers were apprehended. Williams entered a wooded area directly across from the fire station. R. 304, l. 14 – R. 305, l. 4. While in the woods, Williams heard yelling that a person had run from the woods. R. 305, ll. 7-10. Based on what Williams heard from the individuals at the fire station, Williams started to search for the individual behind a nearby abandoned house. R. 305, ll. 11-20; R. 319, ll. 19-23.

SLED Agent Jeff Croft appeared on the scene. R. 306, ll. 13-15. When Williams gave Croft a description of the individual he was pursuing, Croft claimed the description was similar to that of one of the bank robbers. R. 306, ll. 16-22. Local law enforcement set up a perimeter. R. 307, ll. 8-16. SLED’s dog tracking team arrived as well. R. 309, ll. 5-7. Eventually, a person emerged from a nearby cornfield and was apprehended, but this was not the person Williams had been chasing. R. 309, l. 22 – R. 310, l. 4. Appellant was arrested near a hedge close to railroad tracks and the fire department. R. 326, ll. 4-16. Williams received a call about a suspicious person walking on the road. R. 310, ll. 5-14. Williams and other responded, and arrested Lewis

Garvin. R. 310, l. 17 – R. 311, l. 18; R. 328, ll. 1-14. The police also arrested Homer James, who was in a nearby wooded area. R. 330, ll. 9-23.

During his closing argument, the solicitor exploited the erroneously admitted evidence of Appellant's flight to argue Appellant was guilty. The solicitor went into excruciating details regarding the testimony of how Appellant was apprehended. R. 518, ll. 2-12. He described the firefighters chasing Appellant, and his ultimate capture by SLED. R. 518, ll. 2-20.

Discussion

The Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970). Appellant acknowledges that the South Carolina Supreme Court has held “[f]light from prosecution is admissible as evidence of guilt.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 266 (2006). However, “the relevance of flight evidence is premised on a nexus between the flight and the offense charged.” State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004). In fact, “[e]vidence of flight should be excluded when the flight is clearly linked to a separate offense for which the defendant is not on trial.” Id. Along these lines, this Court held “[u]nexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee.” State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005).

“The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities.” State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). “It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of

his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.” State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (2005).

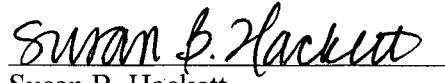
The trial judge erred in permitting the state to introduce evidence that Appellant fled from police officers approximately thirty hours after the bank robbery. As Garvin stated, an individual in the car forced participation in the robbery using a gun. When Appellant fled from the police in the car, his flight was motivated by the person in the car with a gun, continuing to direct his actions. When Appellant fled from the police in the woods, he was finally free from his captors. The state had not shown that Appellant was fleeing from police because he feared apprehension in connection with the bank robbery. Rather, the evidence indicated this was the first opportunity Appellant had to escape the men who were forcing his participation as a getaway driver. As a result, the state failed to show the connection between Appellant running in the woods and his fear of arrest in connection with the robbery.

The error was prejudicial in light of the state’s meager case. The state had very little evidence connecting Appellant to the bank robbery. It was undisputed that Appellant went into the bank at noon and again at 1 p.m. During both visits, Appellant wore no disguise when inquiring about opening a bank account. It was undisputed that Appellant did not enter the bank when it was robbed. The state’s theory was that Homer James and Lewis Garvin were the men who entered the bank with guns and stole money. The state theorized Appellant was a willing getaway driver, but had very little evidence to support this hypothetical. In fact, Garvin, who had admitted his involvement in the robbery, testified that Appellant was unaware of any plan to rob and that a man in the car had forced the commission of the robbery by threats of violence. By resorting to evidence of flight, the state showed the weakness of its case against Appellant. See United States v. Foutz, 540 F.2d 733, 740 (4th Cir. 1976)(stating “[t]he inference that one

who flees from the law is motivated by consciousness of guilt is weak at best"). By allowing the state to introduce evidence of flight and argue it was evidence of consciousness of guilt, the judge allowed the state's burden of proof to be diluted as the jury was allowed to base its verdict

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County

Roger M. Young, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

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SC Court of Appeals

Counsel for Leon Amos Jason James states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of appellant's trial before Judge Roger M. Young, which was held on Oct. 27, Nov. 30, Dec. 1-3, 2015 (Trial and Motions), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738, (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Leon Amos Jason James.

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
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THE STATE,

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DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

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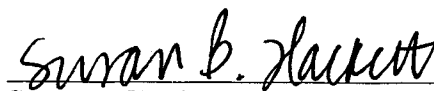
SC Court of Appeals

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

- (1) Entire pre-trial hearing transcript dated October 27, 2015;
- (2) Entire trial transcript dated November 30 – December 3, 2015;
- (3) Post-trial hearing transcript dated February 11, 2016;
- (4) True-billed indictments (2014-GS-02-202, -204); and
- (5) Sentence sheets.

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

February 3, 2017



Susan B. Hackett
Appellate Defender
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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."

February 3, 2017.

Susan B. Hackett

Susan B. Hackett
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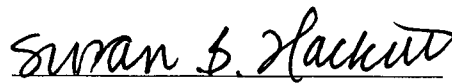
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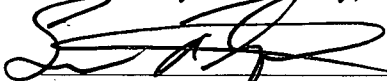
CERTIFICATE OF SERVICE

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 Leon Amos Jason James, 291860, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 3rd day of February, 2017.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2017.



(L.S)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.

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SC Court of Appeals