

6

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

JUN 07 2017

SC Court of Appeals
RESPONDENT

THE STATE,

V.

DEANDRE WILLIE HUGHES,

APPELLANT

APPELLATE CASE NO. 2016-002545

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The trial court erred in admitting State’s Exhibits 1 and 2 into evidence which were the videos of the car chase and/subsequent arrest which were overly cumulative and more prejudicial than probative pursuant to Rule 403, SCRE.....3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014)..... 5

Rules

Rule 403, SCRE..... 1, 3, 5

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting State's Exhibits 1 and 2 into evidence which were the videos of the car chase and subsequent arrest which were overly cumulative and more prejudicial than probative pursuant to Rule 403, SCRE?

STATEMENT OF THE CASE

On July 22, 2016, the Spartanburg County Grand Jury indicted Deandrea W. Hughes on the charges of failure to stop for a blue light and the unlawful carrying of a pistol. On December 9, 2016, the Spartanburg Grand Jury indicted Hughes on the charges of armed robbery and possession of a weapon during the commission of a violent crime. On December 14-15, 2016, Appellant Hughes proceeded to trial before the Honorable J. Derham Cole and a jury. Hughes was represented by Andrea Leah Price, and the state was represented by Spenser Holloran Smith and Jennifer A.J. Jordan. R. 1. The jury found Hughes guilty on all charges as indicted. R. 160, ll. 1 – 24. Judge Cole sentenced Hughes to twenty-five years on the armed robbery, five years on the possession of a firearm, three years on the failure to stop for a blue light, and one year on the unlawful carrying of a pistol. All charges were to run concurrent. R. 167, ll. 1 – 19. Hughes filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in admitting State's Exhibits 1 and 2 into evidence which were the videos of the car chase and subsequent arrest which were overly cumulative and more prejudicial than probative pursuant to Rule 403, SCRE.

On February 22, 2016, Ellis Jones was on his way to work at Frito-Lay in Spartanburg County about six o'clock in the early morning. R. 41, ll. 14 – R. 42, ll. 4. He saw a young man, whom he later identified as Appellant Hughes, standing on the corner by the red light. The young man motioned that he wanted a cigarette. Jones stopped, and the man indicated that he needed a ride to work on Arch Street. Jones gave him a ride, but the man began telling him reasons he needed money. R. 42, ll. 5 – 25.

The man decided that he needed to go to Boiling Springs so Jones took him there but stopped at the Race Way on the out skirts of town. The man asked for money so Jones took \$40 from the ATM and gave to him. Jones went into the store and bought a White Owl for the man. At that point, Jones said the man pulled a gun, and ordered Jones from the car. The man then left with Jones' vehicle which was a 2009 Tahoe. R. 43, ll. 2 – R. 44, ll. 25; R. 45, ll. 19 – 20.

Jones went into the store and had the clerk call 911. During the trial, he identified Appellant Hughes as the man who took his vehicle. Jones said that he was "very confident" Hughes was the man who did this. R. 47, ll. 1 – 22.

After the 911 call, later in the day, Jones received a call that his vehicle had been found in a gully near Hidden Parks Apartments. Jones retrieved his car which had numerous items in it that were not his. R. 48, ll. 6 – R. 49, ll. 25.

Deputy Jeremy Hensley responded to the call of a car- jacking or armed robbery on February 22, 2016. R. 74, ll. 19 – R. 75, ll. 25. He spotted the Tahoe being chased by the police

so he got involved in the chase. He saw the driver jump from the Tahoe while it was still moving. Officer Hensley's in-car video, which was played for the jury during the trial as State's Exhibit One, showed the chase and the vehicle going over the curb. It also showed the driver jumping from the vehicle and running from the police. Defense counsel made no objection to the admission of State's Exhibit One. R. 76, ll. 1- R. 79, ll. 11.

The officer saw the driver exit the Tahoe and begin running. The officer began running after the driver chasing him on foot. Officer Hensley saw the driver pull an item from his waistband and throw it across the street. The item found was a 380 firearm. R. 79, ll. 11 – R. 80, ll. 25.

Officer Frank Osrechek became involved in the chase as he was nearby when the call came that the vehicle had been located. He was in a foot chase of the driver when he observed the driver running up the hill to an adjacent property. However, when he went around a building to cut the driver off, Officer Hensley had already apprehended the suspect. R. 83, ll. 11 – R. 85, ll. 15. Officer Hensley arrested Hughes. R. 81, ll. 1 – 23.

Officer Osrechek had an in-car video of the chase also. This video was admitted into evidence as State's Exhibit Two at trial, and published to the jury. This video showed the chase and ended there. Officer Osrechek believed that he saw the driver exit the vehicle as the officer entered the apartment complex where the Tahoe was driven. R. 85, ll. 10 – R. 87, ll. 16. Defense counsel made no objection to the admission of this video. R. 86, ll. 1 – 5.

Appellant Hughes testified at trial that he was innocent. He said that he "did not steal people's stuff." R. 125, ll. 2 – 12. He said the paperwork was "messed up" because the papers had his age as 23 and he was only 19. R. 122, ll. 1 – R. 124, ll. 25.

The jury found Appellant Hughes guilty of all charges.

Discussion

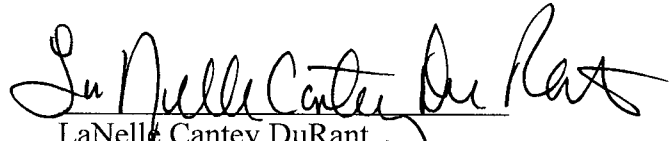
Rule 403, SCRE, provides that although evidence may be relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

When balancing the danger of unfair prejudice against the probative value in determining whether to admit evidence, the determination must be based on the entire record and will turn on the facts of each case. State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014).

The trial court erred in admitting the video from Officer Hensley's police car, State's Exhibit One, which showed the car chase, and showed the driver jumping from the car and running. It was prejudicial and, based on the entire record and testimony at trial, it was cumulative. The car video was not necessary to tell the jury what happened. The second video, State's Exhibit Two, was prejudicial and cumulative as it showed the chase also. The visual effect was prejudicial. For the state to introduce two in-car videos of the police chase was cumulative and prejudicial.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of June, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEANDRE WILLIE HUGHES,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

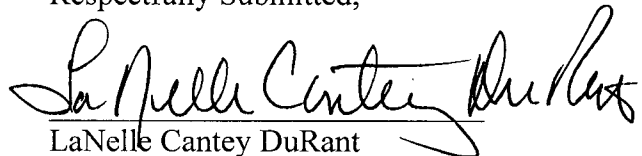
Counsel for Deandre Hughes states:

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 J. Derham Cole, which was held on December 14 - 15, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Deandre Hughes.

RECEIVED
JUN 07 2017
SC Court of Appeals

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

This 7th day of June, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEANDRE WILLIE HUGHES,

APPELLANT


**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) Sentencing Sheets
- (3) Trial Transcript December 14-15, 2016

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

June 7, 2017


LaNelle Cantey DuRant
Appellate Defender

RECEIVED

JUN 07 2017

SC Court of Appeals

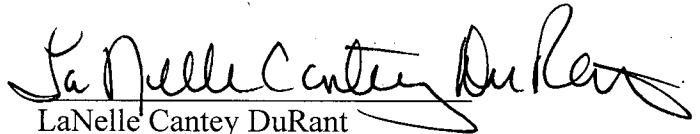
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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."

June 7, 2017.



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

JUN 07 2017

SC Court of Appeals