

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Kristi Lea Harrington, Circuit Court Judge

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JUL 13 2017

SC Court of Appeals

Case No. 2015-001662

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

DEAN NELSON SEAGERS,

APPELLANT.

PETITION FOR REHEARING

TARA DAWN SHURLING

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ATTORNEY FOR APPELLANT

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. *The State v. Dean Nelson Seagers*, 2017-UP-263 (S.C. Ct. App. Dated June 28, 2017). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by this Honorable Court in the opinion in question. In support of this position, the Appellant would show unto this Court the following.

QUESTION I AND II ON APPEAL

Section 1 in the Opinion of the Court

Trial Counsel objected to the voice identification testimony of Detective Grill¹ on two distinct grounds. First, Appellant argued that Detective Grill was not an expert in voice identification. Additionally, he argued that the prosecution had not laid a proper foundation for his voice identification testimony. ROA p. 132, l. 23- p. 135, l. 8.

Appellant respectfully submits that the opinion issued in this case failed to address the two separate components of Appellant's challenge to this testimony. Appellant did not dispute that a non-expert may offer voice identification testimony. Appellant objected to the admission of said testimony on the ground that a proper foundation had not been laid for the introduction of such testimony from this witness. It was Appellant's position that, as with eye-witness identification testimony, the admission of voice identification testimony tainted by suggestive pre-trial identification procedures violates due process. *Neil v. Biggers*, 409 U.S. 188 (1972). Ordinarily, in determining whether eye-witness testimony is reliable, independent of the alleged opportunity for taint, the Court looks to the factors set forth in *Neil v. Biggers, supra*.

¹ The witness's trial testimony is summarized in the Final Brief of Appellant at pages 8-9.

Appellant submits that the *Biggers* factors are equally relevant with voice identification witnesses. Appellant has outlined in detail the trial testimony which establishes that Detective Grill admitted very limited prior opportunity to hear Appellant speak. He did not promptly report his alleged recognition of Appellant's voice, nor did he document it in any way. He could not say how long ago the fleeting exposure he did have had taken place. There was no evidence that Detective Grill had ever reported his alleged recognition of Appellant's voice on the audio recording of the drug transaction in this case. On direct-examination he claimed to have spoken with Appellant on several occasions prior to the date of the alleged buy involved in this case. He, in fact, claimed that he had actual *conversations* with Appellant. He answered "Yes, ma'am" when asked point blank if those were *actual conversations* with Appellant and repeated that response when asked if they were, "[b]ack and forth conversations." ROA p. 132, l. 19- p. 133, l. 24. Adding, "I mean, just --you know, just typical police info--you know, that's all it way." ² ROA p. 133, ll. 20-25. He expressly stated, "I believe so, yes, ma'am" when asked if these "conversations were more than just yes or no." ROA p. 134, ll. 1-3. As noted in the Brief of Appellant, on cross-examination, however, Detective Grill testified as follows:

With regard to his previous opportunity to observe Appellant's voice, on cross-examination Grill admitted that on the two occasions when he had previously spoken with Appellant, "**I believe it was just kind of a hey, how are you doing - type deal as we were on the street working either doing - - executing warrants in this area or just - - just an encounter**". ROA p. 157, 1-6. He asserted, however, that after Appellant was arrested "**we did have a long conversation with the defendant. Yes, sir, I did.**" ROA p. 157, ll. 6-9. When asked if he could remember when these two brief encounters with Appellant before his arrest took place, Grill indicated that he did not remember when they occurred, but that he just knew that he had spoken to Appellant in the past. When Trial Counsel asked him if these encounters were "**said hello on the street?**", Grill repeated "**Yes sir, just an encounter.**" ROA p. 157, ll. 10-16.

² There was no objection to Detective Grill's interjection of testimony about his prior police involvement with Appellant.

The Appellant's argument on appeal was that no foundation had been laid to establish a basis for Detective Grill to give reliable voice identification testimony independent of the lengthy conversation he had with Appellant right after his arrest. The impact of that conversation would have had his ability to independently identify Appellant's voice on the audio tape in question is obvious in light of his very limited prior exposure to Appellant's voice, and the inherent prejudice flowing from his involvement *in this case* as a narcotic's detective. Appellant urges this Honorable Court to grant his request for rehearing on this ground.

Likewise, the opinion of the Court appears to overlook the main thrust of his Question II, dealing with the fact that Detective Grill was not qualified as an expert in voice identification. As argued in his brief, Appellant believes that although the prosecution stated they were not attempting to introduce him as an expert³, the truth is he had already been qualified, without objection, as an expert in narcotics investigations. ROA p. 107, ll10-14. On the very narrow facts of this case, Appellant submitted that the voice identification testimony should have been excluded, not only because the State failed to lay a proper foundation, but also because there existed a very real danger the jury would give it weight to which it was not entitled because of his status as an expert. Therefore, Appellant has not asserted that he should not have been allowed to present this testimony simply because he was not a voice identification expert, but rather that on the facts of this case the jury was likely to improperly attribute credibility to his opinion as to his voice identification in light of his recognition by the Court as an expert.

QUESTION III ON APPEAL

Section 2 in the Opinion of the Court

Appellant respectfully submits that the record before this Honorable Court is void of any evidence that tended to prove Appellant acted in concert with anyone. While, as this opinion

³ ROA p. 133, ll. 8-14.

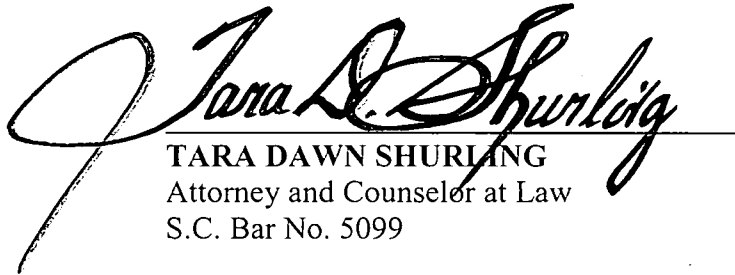
notes, an agreement may be established through “circumstantial evidence and the conduct of the parties”, there was no such evidence in this case.

For all the reasons set forth in the Brief of Appellant, pages 15-16, Appellant respectfully submits that there existed no evidentiary support for an accomplice liability instruction at his trial. He asks for a rehearing on this issue.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant, Dean Nelson Seagers, asks that this Court rehear his appeal and grant him a new trial.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 13th day of July, 2017.

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The Honorable Kristi Lea Harrington, Circuit Court Judge

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Case No. 2015-001662

STATE OF SOUTH CAROLINA,

RESPONDENT.

DEAN NELSON SEAGERS,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 13th day of July, 2017, addressed as follows:

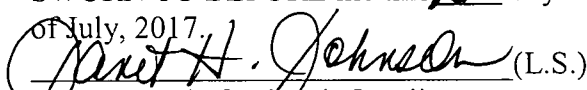
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ATTORNEY FOR THE APPELLANT.

SWORN TO BEFORE me this 13th day
of July, 2017.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/31/24

LAW OFFICE OF



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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Dean Nelson Seagers; 2015-001662.
Appellate Case No.: 2015-001662

Dear Ms. Kitchings:

Attached please find an original and six (6) copies of the Petition for Rehearing and Certificate of Service in the above referenced matter. I am providing the Court two (2) extra copies of the Petition for Rehearing and Certificate of Service which I would appreciate you having a member of your staff clock and return to our courier. With my best regards, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Attachments

cc: Renee Saunders, Assistant Attorney General (w/ enclosure)
Dean Nelson Seagers, 294406 (w/ enclosure)
Sheila Seagers, (w/enclosure)