

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Larry B. Hyman, Circuit Court Judge

RECEIVED
OCT 23 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMAL MARQUIS DANIELS,

APPELLANT

APPELLATE CASE NO. 2017-000135

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in overruling appellant's objection to the 911 dispatcher's notes as inadmissible hearsay?

STATEMENT OF THE CASE

An Horry County grand jury indicted appellant Jamal Marquis Daniels for attempted murder, armed robbery, kidnapping, and first-degree burglary. R. 27, l. 19 – R. 28, l. 24. On April 11, 2016, appellant's case was called for trial before the Honorable Larry B. Hyman, Jr. and a jury. R. 1. Appellant was tried in his absence. R. 5, l. 2 – 6, l. 24. Nancy Livesay represented the State. R. 1. Buddy Long represented appellant. R. 1. The jury acquitted appellant of kidnapping, first-degree burglary, armed robbery, and attempted murder. R. 373, l. 10 – 374, l. 16. The jury convicted appellant of the lesser included offenses of robbery and first-degree assault and battery. R. 373, l. 10 – 374, l. 16. Appellant's sentence was sealed and on January 18, 2017, Judge Hyman sentenced appellant to concurrent ten year terms of imprisonment on both charges. R. 384, l. 11 – 386, l. 5. This appeal follows.

ARGUMENT

The trial judge erred in overruling appellant's objection to the 911 dispatcher's notes as inadmissible hearsay.

Katrina Daniels and Laura Conklin were drug users who lived together in a condominium. R. 105, l. 25 – 106, l. 14. R. 124, ll. 1 – 11. R. 122, ll. 17 – 22. The pair could not reach their usual drug suppliers, so they drove to an area known as Racepath to buy drugs. R. 106, l. 8 – 107, l. 18. They bought \$100 worth of crack cocaine from a man they called "Polo." R. 106, l. 18 – 107, l. 9. R. 84, l. 21 – 85, l. 19. They had never seen Polo before that afternoon. R. 85, ll. 20 – 22.

The couple smoked their crack cocaine that afternoon and decided they wanted more drugs. R. 107, l. 12 – 108, l. 7. They called Polo and told him they wanted to buy \$400 worth of drugs. R. 85, ll. 10 – 15. They offered to go back to Racepath, but Polo told them he would bring the drugs to their house because it was safer. R. 85, ll. 1 – 9.

The couple let Polo in when he arrived and they went to their bedroom to buy the drugs. R. 86, l. 9 – 87, l. 2. Polo only had \$200 worth of drugs, so the couple bought that amount and Polo left. R. 87, ll. 3 – 17.

Polo called shortly after leaving and told them he found another \$200 worth of drugs in his car and offered to return if they were still interested in buying it. R. 88, ll. 14 – 18. They let Polo back into their house and they again went upstairs to the bedroom. R. 88, l. 14 – 89, l. 5. Polo had the drugs in his hand, but was "fidgeting." R. 89, ll. 10 – 15.

The couple heard a knock on the door. R. 89, ll. 10 – 15. They told Polo no one else was allowed in the house, but Polo ran down the stairs. R. 89, ll. 10 – 25. Polo tried to open the door and Conklin struggled with him to keep it closed. R. 124, l. 12 – 125, l. 11. Polo prevailed and a

masked man with a gun entered the house. R. 124, l. 12 – 125, l. 11. The man shot Conklin in the head and her ears began ringing. R. 125, ll. 7 – 22. The man then hit Daniels, briefly knocking her unconscious. R. 125, l. 25 – 126, l. 4. R. 90, ll. 14 – 20.

When Daniels regained consciousness, the masked man was shaking her by the collar and screaming at her to tell him where she had her money. R. 91, ll. 12 – 17. Polo was similarly shaking and screaming at Conklin. R. 91, ll. 12 – 17. They went upstairs and Conklin told them the money was in her car and gave them the keys. R. 125, l. 5 – 127, l. 9.

Polo went downstairs with the car keys. R. 127, ll. 5 – 9. The masked gunman looked at his phone and then ran down the stairs. R. 127, ll. 10 – 21. The women jumped from their second story bedroom. R. 127, l. 21 – 128, l. 16. They fled to a neighbor's house and he called 911. R. 128, ll. 2 – 16. Daniels eventually identified Polo as appellant in a photo lineup. R. 96, l. 16 – 99, l. 20.

The State's first witness was the 911 operator. R. 67, ll. 6 – 21. The State sought to admit both the 911 recording and the operator's dispatch notes. R. 68, l. 11 – 69, l. 17. Appellant objected on hearsay grounds, but the Court overruled the objection and admitted the notes. R. 69, ll. 7 – 18. When the solicitor began having the witness read from the notes, Judge Hyman excused the jury. R. 70, ll. 4 – 15.

During the *in camera* discussion, appellant again objected on hearsay grounds and argued that the notes were inadmissible because the State did not intend to call the neighbor who telephoned 911 as a witness. R. 72, ll. 4 – 19. The trial judge ultimately admitted the dispatch notes under *res gestae*. R. 75, l. 8 – 77, l. 18.

The trial judge erred in admitting the dispatcher's notes. The notes were out of court statements offered for the truth of the matter asserted. Rule 801(c), SCRE. The solicitor

admitted she wanted the notes for the truth of the matter asserted. R. 76, ll. 8 – 15. As appellant argued, no bullet hole, bullet, or shell casing was found and none of the neighbors heard a gunshot. R. 72, ll. 20 – 25. R. 214, l. 13 – 216, l. 9. The solicitor argued the notes were needed to show Conklin and Daniels did not “have time to reflect back and fabricate a story.” R. 76, ll. 8 – 15.

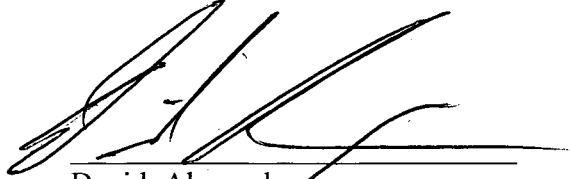
The dispatcher’s notes did not qualify as *res gestae*, but was simply inadmissible hearsay. “In order to qualify as a part of the *res gestae*, a statement must be substantially contemporaneous with the litigated transaction and be the spontaneous utterance of the mind while under the active, immediate influence of the event.” State v. Blackburn, 271 S.C. 324, 327, 247 S.E.2d 334, 336 (1978). “The rationale for the exception lies in the special reliability accorded to a statement uttered in spontaneous excitement which suspends the declarant’s powers of reflection and fabrication.” Id.

The notes were not statements of the witness. The notes were taken by dispatchers who did not testify and from a call made by a declarant who did not testify—the neighbor. The dispatcher’s statements simply do not qualify as *res gestae*.

Furthermore, the hearsay rules specifically prohibit these statements. See Rule 801(d)(1)(B). The State was trying to admit the victim’s statement to the neighbor (through two 911 witnesses) as a prior consistent statement to rebut any assertion of fabrication. Id. Appellant had not made any inference of fabrication because the State had not yet called Daniels or Conklin as witnesses. Therefore, admission under this rule was prohibited and the court erred in allowing this evidence to go to the jury. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of October, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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THE STATE,

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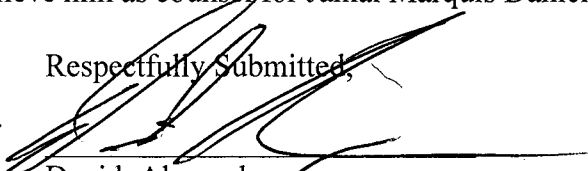
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamal Marquis Daniels 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 Larry B. Hyman, which was held on April 11-14, 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 Jamal Marquis Daniels.

Respectfully Submitted,



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 23rd day of October, 2017.

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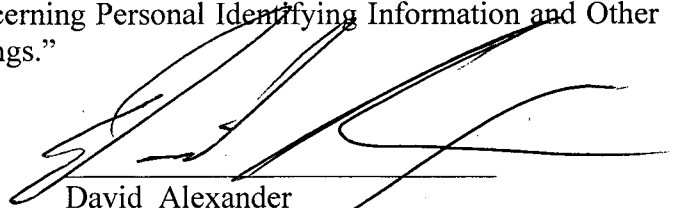
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CERTIFICATE OF COUNSEL

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."

October 23, 2017.



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