

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Williamsburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

RECEIVED

THE STATE,

FEB 16 2017

RESPONDENT of Appeals
SC COURT of Appeals

v.

GARRICK EPPS,

APPELLANT

APPELLATE CASE NO 2015-001003

ANDERS BRIEF OF APPELLANT

JOHN H. STROM
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

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by refusing to grant a continuance where Appellant was unable to present a complete defense as defense counsel was unprepared and without an objectively reasonable trial strategy?

STATEMENT OF THE CASE

On July 31, 2014, the Williamsburg County Grand Jury indicted Appellant Garrick Epps for possession with intent to distribute cocaine, second offense, and possession of cocaine base, second offense. R. 157 - 158.

On April 21, 2015, Appellant proceeded to trial before the Honorable R. Farrell Cothran and a jury. R. 1 - 156. LeGrand Carraway represented Appellant, and Assistant Solicitor Tyler Brown represented the State. The jury found Appellant guilty possession of cocaine base and not guilty of possession with intent to distribute cocaine. R. 152, ll. 19-25. The trial court sentenced Appellant to five years imprisonment. R. 155, ll. 3-13.

ARGUMENT

Did the trial court err by refusing to grant a continuance where Appellant was unable to present a complete defense as defense counsel was unprepared and without an objectively reasonable trial strategy?

Relevant Facts

On June 13, 2014, Williamsburg County Sheriff's narcotics investigators Contrell Watson and Seth Scott were on patrol between the towns of New Zion and Cades. R. 14, l. 18 – 16, l. 19. At around 10:30 p.m., Scott and Watson pulled over Appellant because his rear license plate light was not working. R. 17, ll. 2-22. Appellant was alone in the vehicle.

When questioned, Appellant admitted that his driver's license was suspended. R. 19, ll. 5-17. Scott ran Appellant's identification card through the DMV database, revealing that Appellant had been arrested on at least three other occasions for driving with a suspended license.

At trial, Watson recalled that they would not normally arrest someone for simply driving with a suspended license but, "when the suspension came out to being third offense normally, to be honest with you, it was more than third offense. I think it was like his ninth. . . . [w]e was going to take him into custody at that time." R. 21, ll. 7-24.

Watson averred that Sheriff's Department policy required officers to tow a vehicle when the driver is taken into custody and there is no one present at the arrest to drive it. R. 22, ll. 6-19. Prior to towing the car, the investigators conducted a thorough inventory search of Appellant's car, also pursuant to Department policy. *Id.*

After noting any damage to the car's body and paint, the investigators began carefully looking through the inside of the car. Inside the glove box Watson found a purple Crown Royal

bag. “[F]rom my experience being around the substance, I smelled a strong odor of marijuana scent coming from” the purple bag. R. 23, l. 22 – 26, l. 23.

Inside the Crown Royal bag were “numerous individual bags of marijuana,” nine bags of cocaine base, and four bags of crack cocaine. *Id.* Police also found two hundred ninety two dollars in cash on Appellant.

At the start of his trial, Appellant asked that the trial court grant a continuance because he did not believe that defense counsel was prepared for trial. R. 3, l. 2 – 5, l. 12. The trial court refused to grant a continuance and offered Appellant the opportunity to plead guilty or stand trial. Appellant elected to proceed with trial. *Id.*

Investigators Watson and Scott both testified at Appellant’s trial. Chemist Joe Powell also testified. He stated that he individually tested all ten bags of containing cocaine base and all four bag cocaine crack cocaine. R. 50, l. 23 – 54, l. 16. The total weight of the crack cocaine was .71 grams. The total weight of cocaine base was 1.66 grams. *Id.* The marijuana was not tested.

Appellant testified that, prior to his arrest; he was fishing with a group of casual acquaintances. R. 63, l. 2 – 76, l. 6. Appellant normally does maintenance work for a mobile home landlord, but he had the day off. On the day of his arrest, he agreed to pick up several of his fishing buddies to give them a ride to their fishing hole. *Id.*

After having fished for several hours, he received a phone call from his wife telling him that he needed to return home so that she could use the car. *Id.* On his way home, he was pulled over by Investigators Watson and Scott. Appellant adamantly denied knowing that there was a Crown Royal Bag in his glove box. He attempted to explain to the officers that it was likely left in his car by a fishing acquaintance named Levi Brown.

On cross-examination, Appellant explained that he had picked up Brown from his home in Flea Hill and two other fishing buddies, Rick and Mike, who lived in neighboring Barrineau. R. 77, ll. 6-24. Appellant further testified that Brown had brought a gun, to deal with any snakes they encountered, and the Crown Royal Bag, which Brown told him only contained marijuana. R. 78, ll. 14-22.

The men fished until it was dark when Appellant received the call from his wife. Appellant drove his friends to homes and was stopped by Watson and Scott while returning home. R. 82, ll. 1-13. Once pulled over, Appellant repeatedly told Watson and Scott that the drugs belonged to Brown and where they could find him, but police did no additional investigation. R. 93, l. 3 – 97, l. 17.

In brief rebuttal testimony, Investigator Watson countered that Appellant simply stated that he had been fishing with a man named Levi earlier in the day. R. 98, l. 7 – 100, l. 14. According to Watson, Appellant never mentioned Mike or Rick and never provided a last name for Levi. *Id.*

In addition, Watson stated that Appellant had admitted to smoking marijuana earlier that day with Levi. *Id.* Under cross-examination, Watson conceded that his incident report never mentioned Appellant allegedly confessing to smoking marijuana. *Id.*

Defense counsel did not motion for a directed verdict of acquittal at either the close of the State's case or the close of the defense's case. The jury deliberated for one hour and ten minutes and found Appellant guilty possession of cocaine base and not guilty of possession with intent to distribute cocaine. R. 152, ll. 19-25. Appellant was sentenced to the maximum possible term of five years imprisonment. R. 155, ll. 3-13.

Discussion

“The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.” *State v. Yarborough*, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001).

However, even if there was no evidentiary support, “[i]n order for an error to warrant reversal, the error must result in prejudice to the appellant.” *State v. Preslar*, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct.App.2005); *see also State v. Wyatt*, 317 S.C. 370, 372–73, 453 S.E.2d 890, 891 (1995) (stating that error without prejudice does not warrant reversal).

In holding that the trial judge did not abuse his discretion in refusing to grant a continuance, the South Carolina Supreme Court in *State v. Squires*, 248 S.C. 239, 149 S.E.2d 601 (1966) stated in pertinent part that “[t]here is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points in their behalf could have been raised had more time been granted for the purpose of preparing the case for trial.” *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989) (citing *Squires*, 248 S.C. at 244, 149 S.E.2d at 603).

In addition, if a defendant is not granted sufficient opportunity to present a complete defense, including the right to present favorable witnesses, the denial of a continuance can constitute an error of law. *State v. Cooper*, 747 S.E. 2d. 398, 404 (N.C. Ct. App. 2013) (holding that the denial of a defendant's right to present a witness through denial of a continuance, and the denial of a defendant's right to present a witness through a misapplication of a rule of evidence are constitutionally indistinguishable).

“Few rights are more fundamental than that of an accused to present witnesses in his own defense.” *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S.Ct. 1038 (1973); *see also California v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, (1984) (finding the Due Process Clause of the Fourteenth Amendment affords criminal defendants a meaningful opportunity to present a complete defense); *State v. Hutton*, 358 S.C. 622, 631, 595 S.E.2d 876, 881 (Ct.App.2004) (recognizing fundamental fairness requires criminal defendants be granted a meaningful opportunity to present a complete defense).

Here the trial court committed an abuse of discretion in refusing to allow Appellant a continuance so that defense counsel could prepare for the trial and to allow Appellant the opportunity to present Levi Brown, a favorable witness under the defense’s theory of the case. R. 3, l. 2 – 5, l. 12; R. 63, l. 2 – 76, l. 6; *see also Cooper*, 747 S.E.2d at 412 (holding that trial court violated defendant’s constitutional right to present a complete defense by excluding defense expert’s testimony); *Chambers*, 410 U.S. at 302, 93 S.Ct. at 1049 (the right to call witnesses in one’s own behalf are essential to due process).

Defense counsel was obviously unprepared for trial. He failed renew any motions that may have been made during jury *voir dire*. Critically he failed to make a motion for a directed verdict of acquittal at either the close of the State’s case or at the close of the defense’s case. Moreover, defense counsel failed to properly lead Appellant through his direct testimony. Instead, Appellant was forced to provide long narrative answers that likely confused or misled the jury without the guiding hand of counsel to help keep Appellant’s responses focused.

The trial court committed an error of law in denying Appellant a continuance to allow the additional time necessary for defense counsel to prepare for trial and to allow Appellant the chance to locate Levi Brown. Accordingly, Appellant should be granted a new trial.

CONCLUSION

For the foregoing reasons, Appellant Garrick Epps respectfully requests that this Court reverse his conviction and remand this case to the Williamsburg County Court of General Sessions for a new trial.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of February, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Garrick Epps 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 R. Ferrell Cothran, which was held on April 20, 2015, 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 Garrick Epps.

Respectfully Submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

This 16th day of February, 2017.

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**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); and
- (2) Appellant's April 21, 2015 Trial Transcript.

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

February 16, 2017.


John H. Strom
Appellate Defender

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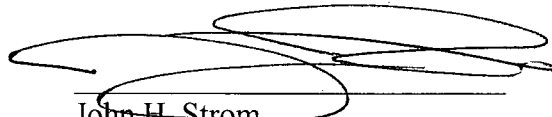
FEB 16 2017

SC Court of Appeals

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 16, 2017.



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CERTIFICATE OF SERVICE

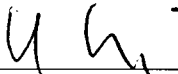
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Garrick Epps, 255508, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 16th day of February, 2017.


John H. Strom

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of February, 2017.



Notary Public for South Carolina

(L.S)

My Commission Expires: 5/12/2025