

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TEVON JACKSON,

APPELLANT

ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by admitting testimony, over Appellant's hearsay objection, that indicated the decedent drug dealer was not worried about another individual with whom he previously had disagreements and to whom he owed money?

STATEMENT OF THE CASE

Appellant Tevon Jackson was indicted on January 15, 2009, by the Aiken County Grand Jury for murder and possession of a firearm during the commission of a violent crime. R. 13, ll. 7-12; R. 779—R. 780; R. 782—R. 783. Appellant's case proceeded to trial before the Honorable Doyet A. Early, III, and a jury from February 22 through 26, 2011. Wallis Alves (Counsel) and Michael Routzong represented Appellant, while the State was represented by John W. Weeks and Elizabeth B. Young. R. 1; R. 739.

The jury found Appellant guilty as charged. R. 735, ll. 5-15. On February 28, 2011, the trial court imposed concurrent sentences of thirty years for murder, and five years for possession of a firearm during the commission of a violent crime. R. 777, ll. 6-11.

ARGUMENT

The trial court reversibly erred by admitting testimony, over Appellant's hearsay objection, that indicated the decedent drug dealer was not worried about another individual with whom he previously had disagreements and to whom he owed money.

Appellant was accused of shooting Marcus Finklin during the early morning hours of June 4, 2008. R. 780. Finklin, a known drug dealer, was found later the same morning in the driver's seat of his car that was parked in the cul-de-sac at the end of Dry Branch Road; a single gunshot wound was in the left side of his head. R. 64, ll. 14-23; R. 75, ll. 21-22; R. 211, ll. 9-15; R. 286, ll. 5-7. Although Appellant admitted to riding with Finklin on two occasions the night of the incident, he consistently denied shooting Finklin, being present when Finklin was shot, or even knowing of the shooting until he was told by another person upon waking later in the morning. R. 156, ll. 2-20; R. 618, ln. 18—R. 619, ln. 2; R. 623, ln. 7—R. 625, ln. 7; R. 626, ln. 10—R. 627, ln. 8; R. 628, ll. 15-22; R. 649, ll. 6-9; R. 765, ll. 3-4.

During trial, testimony was elicited indicating Finklin intended to go to Georgia the night he was killed because he was supposed to pay another person known as "Bo" Chavous (Bo). R. 156, ll. 8-9; R. 161, ll. 7-12; R. 610, ll. 16-20. Testimony also indicated that Finklin previously had disagreements with Bo within a few weeks of the present incident. R. 161, ll. 16-17; R. 288, ln. 23—R. 289, ln. 2; R. 291, ll. 14-16. Further, it was revealed not only that Bo "drove a white car that looked like a police car," but also that Finklin was followed by a white car that looked like the police during the early morning hours of June 4, 2011, on Dry Branch Road not far from the location

where Finklin's car and body were later discovered.¹ R. 161, ll. 13-15; R. 526, ln. 8—R. 527, ln. 14;

Ms. Kenisha Shontell Jackson was the mother of Finklin's daughter, and testified as a witness for the State. On cross-examination, Jackson likewise acknowledged that Finklin had problems with Bo, and that Bo drove a white car that looks like a police car. R. 288, ll. 16-25. Jackson also testified that she spoke with Finklin over the phone on the night of June 3rd to 4th, 2008, and she was aware that a car similar to Bo's was seen driving behind Finklin. She indicated Finklin said it was police. R. 289, ll. 3-16.

On redirect examination, Jackson said the phone conversation regarding the car that followed Finklin occurred between midnight and 1:00 am. R. 291, ll. 1-9. Moreover, she acknowledged again that Finklin had disagreements with Bo, but "assumed that was over." R. 291, ll. 11-18. The State then asked, "*Did [Finklin] indicate he was worried about Bo Chavous?*" to which Jackson immediately responded, "*Not at all.*" R. 291, ll. 19-20 (emphasis added). Counsel objected on the basis of hearsay. R. 291, ln. 21. However, the objection was overruled. R. 291, ln. 22.

The trial court abused its discretion by overruling Counsel's objection to Jackson's statement, as it constituted impermissible hearsay.² "Hearsay' is a statement, other than

¹ Officer Detroit Spires of the New Ellenton Police Department also testified that he followed Finklin's vehicle the night of the incident. Spires stated he drove a white unmarked 2000 Ford Crown Victoria. R. 548, ln. 3—R. 549, ln. 3. However, Spires also admitted that he never told the investigators in this case about this information; rather, he spoke with the prosecutor's office regarding the matter "once . . . this case started." R. 551, ll. 7-24.

² State v. Garner, 389 S.C. 61, 65, 697 S.E.2d 615, 617 (Ct. App. 2010) ("Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant.").

one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. Generally, hearsay is inadmissible. Rule 802, SCRE.

In the present case, the response of Jackson to the State’s improper question constituted hearsay because it confirmed information Jackson allegedly received from a conversation with Finklin regarding Finklin’s relationship with Bo. As such, it should be deemed acknowledgment of a statement other than one made by the declarant while testifying at trial. Further, the information was offered to prove the truth of the matter asserted. The State’s inquiry clearly sought to prove Finklin had no concerns regarding Bo in order to counter any impressions the jury may harbor that Finklin’s death was the result of violence between a known drug dealer, and another to whom he owed money. Therefore, this constituted impermissible hearsay, and the trial court erred in failing to sustain Counsel’s objection. Rule 801(c), SCRE; Rule 802, SCRE.

Furthermore, not only was the admission of this statement erroneous, but it was also highly prejudicial to Appellant’s case. “No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.” See, e.g., State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) (quoting State v. Reeves, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990)). “Whenever hearsay *which has some probative value as to a material fact* is erroneously admitted into evidence, prejudice is presumed.” Orangeburg County Dept. of Soc. Servs. v. Schlins, 291 S.C. 477, 479, 354 S.E.2d 388, 390 (1987) (emphasis added).

In the case at bar, the fact that Bo was a creditor to whom Finklin owed money and with whom Finklin had a dispute was critical to Appellant's defense. Likewise critical to Appellant's defense were sightings of a white that car matched the description of Bo's which followed Finklin on the early morning hours of June 4, 2008, on the same street where Finklin's car and remains were later found. Taken together, these facts readily suggest what the State sought to deny: that Finklin could have been killed by Bo rather than Appellant. See, e.g., Holmes v. South Carolina, 547 S.C. 319, 331, 126 S.Ct. 1727, 1735 (2006) (discussing the rule regarding admission of evidence of third-party guilt).³ Thus, the erroneously admitted hearsay was probative as to a material fact in Appellant's case. Accordingly, Appellant was prejudiced by the trial court's admission of the improper hearsay as it could reasonably have affected the result of the trial.

³ The Holmes Court also addressed the relationship between the strength of the prosecution's case and the evidence of third party guilt:

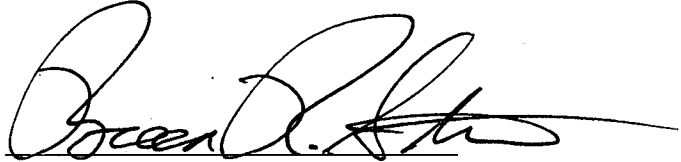
Just because the prosecution's evidence, *if credited*, would provide strong support for a guilty verdict, it does not follow that evidence of thirdparty guilt has only a weak logical connection to the central issues in the case. And where the credibility of the prosecution's witnesses or the reliability of its evidence is not conceded, the strength of the prosecution's case cannot be assessed without making the sort of factual findings that have traditionally been reserved for the trier of fact and that the South Carolina courts did not purport to make in this case.

Id. 547 S.C. at 330, 126 S.Ct. at 1734 (emphasis in original). In the present case, the credibility of the State's key witnesses—Joseph Dicks and Jose Serrano—was weak, as both were impeached based on their prior convictions and pending charges. R. 249, ln. 5—R. 251, ln. 8; R. 426, ln. 5—R. 430, ln. 24. These were the only two witnesses who indicated Appellant admitted his guilt to them the night of the incident. R. 233, ln. 21—R. 237, ln. 22; R. 408, ln. 5—R. 411, ln. 21; R. 431, ll. 7-13. However, the credibility and reliability of these and other witnesses was contested throughout the trial by the defense. R. 254, ln. 19—R. 270, ln. 20; R. 431, ln. 23—R. 439, ln. 16; R. 652, ln. 11—R. 693, ln. 6.

CONCLUSION

For the foregoing reasons, Appellant Tevon Jackson respectfully requests reversal of his convictions, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of May, 2012.

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Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

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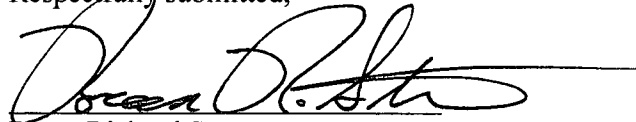
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tevon Jackson states:

1. He is an 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 Doyet A. Early, III, which was held on February 25, 2011, 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 Tevon Jackson.

Respectfully submitted,



Breen Richard Stevens
Appellate Defender

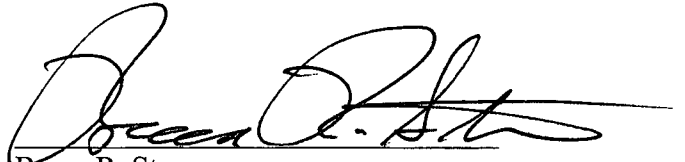
ATTORNEY FOR APPELLANT

This 18th day of May, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 18, 2012.

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen R. Stevens
Appellate Defender

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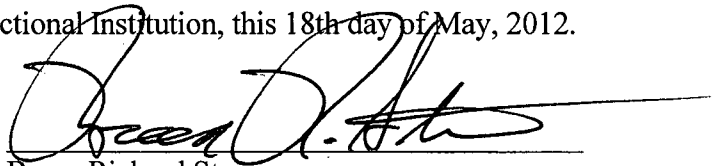
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CERTIFICATE OF SERVICE

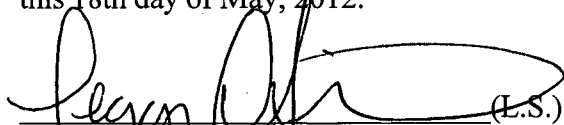
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Tevon Jackson, #344982 at Lee Correctional Institution, this 18th day of May, 2012.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of May, 2012.



(L.S.)

Notary Public for South Carolina

My Commission Expires: December 4, 2017 .