

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEVEN RICHARD LEWIS,

APPELLANT

APPELLATE CASE NO. 2017-001234

ANDERS BRIEF OF APPELLANT

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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 court erred by admitting appellant’s jail calls where the relevance of those calls was substantially outweighed by their unduly prejudicial effect, given the cursing about irrelevant matters, and untrue hearsay information that a witness had been murdered that was on those calls, and where the judge erroneously reasoned that because appellant did not deny the charges on the jail calls that they were admissible as statements against interest3

Relevant Facts.....3

Jail Calls.....6

Discussion.....7

CONCLUSION.....10

PETITION TO BE RELIEVED AS COUNSEL11

TABLE OF AUTHORITIES

Cases

State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) 8

State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013)..... 8

State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992) 9

State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988) 9

State v. King, ___ S.C. ___, 810 S.E.2d 18 (2017) 7, 8

State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) 9

Rules

Rule 403, SCRE 8, 9

Rule 404 (b), SCRE 8

Rule 804 (b)(3), SCRE 8

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting appellant's jail calls where the relevance of those calls was substantially outweighed by their unduly prejudicial effect, given the cursing about irrelevant matters, and untrue hearsay information that a witness had been murdered that was on those calls, and where the judge erroneously reasoned that because appellant did not deny the charges on the jail calls that they were admissible as statements against interest?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offenses of murder, attempted murder, armed robbery, burglary in the first degree, and kidnapping. R. 413-422. His case was called to trial on May 27, 2017, before the Honorable J. Derham Cole, and a jury. Matthew William Shealy represented appellant. Derrick Balsa and Nicholas Sharpe were the assistant solicitors. R. 1.

On May 24, 2017, appellant was found guilty on all counts. R. 405, l. 5 – 406, l. 1. Judge Cole sentenced appellant to life imprisonment for murder, life imprisonment for burglary in the first degree, thirty years imprisonment for armed robbery, and thirty years imprisonment, consecutive, for attempted murder. R. 409, l. 16 – 410, l. 13.

This appeal follows.

ARGUMENT

The court erred by admitting appellant's jail calls where the relevance of those calls was substantially outweighed by their unduly prejudicial effect, given the cursing about irrelevant matters, and untrue hearsay information that a witness had been murdered that was on those calls, and where the judge erroneously reasoned that because appellant did not deny the charges on the jail calls that they were admissible as statements against interest.

Relevant Facts

Spartanburg Sheriff's Deputy Nick Hullinger went to the home shared by the decedent and his girlfriend, Casey Scruggs, at 5:17 a.m. on May 22, 2015. R. 70, l. 14 – 71, l. 8. When he arrived he saw people standing outside in the driveway motioning him towards the home. R. 71, l. 14-21.

Once inside, Hullinger saw that the house had been ransacked -- "completely in disarray" -- "it looked like everything had been thrown around and turned over." R. 77, ll. 3-8.

A neighbor, Tony Turner, remembered the decedent's girlfriend, Casey, was banging on his door "at around five a.m." that morning, and she was covered in blood and duct tape. R. 83, l. 10 – 84, l. 21. Turner said that Casey mentioned the name, "Scooter," while she was in disarray. Turner also interpreted Casey's words as indicating someone else was involved in the perpetrating the incident with "Scooter." R. 84, l. 23 – 85, l. 13. Evidence offered later during the trial showed appellant's nickname was allegedly "Scooter."

EMS paramedic Zach Hubbard remembered they arrived at the home of the shooting victims before the police that morning. Casey was covered in blood. Hubbard testified that Casey told him the two shooters were: "Drew Cash and Steven Lewis." R. 94, ll. 3-13.

Robert Talanges was the forensic ID officer for the Spartanburg County Sheriff's Department. He testified he found one of the doors was off the hinges -- hanging by a padlock -- and the house had been ransacked. Three bullets were found at the crime scene. Two of them were in the ceiling, and one was on the floor. R. 116, l. 21 – 117, l. 3; r. 128, ll. 12-16; r. 138, ll. 8-21. The state's theory was that only one gun was used in the murder, attempted murder case here but the state could not conclusively establish that as a fact.

Casey Scruggs was thirty-years-old at the time of appellant's trial. The decedent had been her boyfriend for four and a half years, and they had lived together for three or four months. Casey claimed that decedent worked as a bartender and a trainer at the Olive Garden in Gaffney, South Carolina. R. 189, ll. 3-25.

However, other evidence offered during the trial clearly showed the decedent was also a drug dealer. Casey offered that her decedent boyfriend provided her with methamphetamine and suboxone. R. 212, ll. 13-22. The decedent had a surveillance video so "we could see who came in and out." R. 213, ll. 5-16.

The decedent met appellant at "a store," and he stayed with Casey and the decedent for about a month. He was known as "Scooter." Casey said appellant moved out about five days before the fatal robbery in this case. R. 190, l. 7 – 191, l. 25. Casey claimed appellant stole some of the decedent's drugs, his cell phone, some cologne, and even the decedent's rental car when he left.¹ R. 192, ll. 3-19.

¹ Long-term drug use was a common theme among witnesses in this case. Bridget Nicole Cash, the sister of appellant's alleged accomplice, for example, testified she had been under the influence of drugs for the "past ten years." Cash said the decedent was her drug dealer. He provided her with heroin, methamphetamines, pills, "pretty much anything." She claimed she was under the influence of drugs at a prior hearing, and therefore her prior testimony could not accurately help her recollection of what had actually occurred. R. 320, l. 3 – 321, l. 25. Cash claimed she overheard appellant talking to her brother, and "Steven was wanting to go rob Carey

Casey remembered waking up very early on the morning of May 22, 2015, and she heard the decedent say “Baby, call 911.” R. 194, ll. 6-21. As she started to call 911, she testified appellant came into her bedroom, wearing purple latex gloves, and he used duct tape to tie her hands behind her back, and “pretty much hog tied me with my chin to the mattress and my hands behind my back.” Casey maintained that appellant and Cash then ransacked her house for “two hours.” R. 195, l. 5 – 196, l. 13.

At some point that morning, Casey said that she was partially able to remove the duct tape, and she kicked open a side door. She saw Drew Cash “standing outside by the car, by his Mazda, loading stuff up.” Casey testified that appellant came back into the house, and he dragged her back into the bedroom. Casey claimed appellant “shot me in the back of the head and then ran and shot him, Carey Mauldin, my boyfriend, that was laying on the floor on his back. Shot him again. And then they were gone.” Casey was badly wounded but the bullet “luckily, it grazed my head.” R. 198, ll. 6-18. Conversely, Dr. John Wren, the pathologist, testified that the decedent was shot seven times, and he had four stab wounds. R. 333, l. 10 – 337, l. 13.

Casey stated that she told her neighbor that “Scooter,” appellant, was one of the robbers, and she said she told the ambulance driver the names of both robbers. R. 199, l. 5 – 200, l. 18.

Spartanburg Sheriff’s Deputy Todd Ruffner also testified that Casey Scruggs named “Scooter,” and Drew Cash as the men who robbed and shot her. R. 291, l. 2 – 292, l. 4.

Brian Ezell was a sheriff’s deputy in Guilford County, North Carolina. He was the canine handler, and he assisted in the apprehension of Cash, and appellant. Ezell remembered

[the decedent] twice, the second time.” Cash claimed appellant took her pistol without her permission, and appellant offered to pay for the pistol but Cash maintained she refused to sell it to him. Therefore, according to Cash, appellant just took her pistol with any compensation for it. R. 315, l. 3 – 322, l. 8.

the police received information the man were at a house in his county. When the police surrounded the house in North Carolina where the men were allegedly staying, "Mr. Cash ran out of the back of the -- out the back of the residence," and he was arrested. Appellant remained in the house. Ezell testified the police put an explosive on the front door, which was activated. "Then Mr. -- Mr. Lewis came out and gave up." R. 224, ll. 4-18.

Jail Calls

Solicitor Balsa told the judge the state wanted to introduce three jail calls made by appellant from the North Carolina jail. The defense objected, stating that none of the three calls were relevant. Defense Counsel Shealy said that one of the calls was a conversation about getting rid of a particular phone that had "no tie to this case." R. 258, l. 17 – 259, l. 23. Shealy argued that there were millions of such phones around, and there was no tying the cell phone to this case.

State's exhibit 80, the jail calls exhibit, is on file with this Court. Appellant curses about the cell phone in the first call, and he states that anyone who examined or used the phone was "in more trouble than he was," and the woman on the other end of the phone call also curses. The judge overruled the objection to the first jail call. R. 260, ll. 9-22.

Shealy objected to the second jail call because appellant referred to "some news," and it was unclear who provided this information to appellant, it was "hearsay within hearsay" and it had no relevance to whether appellant was one of the robbers or the murderer. R. 260, l. 24 – 262, l. 18. Counsel also argued if this jail call had any probative value it was "vastly outweighed by its prejudicial effect because of the language that was used." R. 262, l. 5 – 263, l. 7.

The judge asked defense counsel if appellant ever denied the charges in any of the jail calls. Defense counsel responded that he was not aware of any denial of the charges on the jail

tape. The solicitor also urged that he thought appellant's "tone of voice and his emotions" constituted an admission. The judge responded he did not think that the tone "was clearly an admission," but he overruled the objection to the second jail call. R. 263, l. 10 – 264, l. 19.

On the second jail call, appellant said: "The bitch said I did it," and the tone of the call was very prejudicial where the context of what appellant was talking about was vague.

Defense counsel argued that the third jail tape referred to appellant allegedly learning a witness against him [the state urged it was Casey Scruggs he was talking about]: "She ain't alive no more. . . . I don't know what happened to her, but that's just what I'm told. Now, there is some foul language in that one [the third call]." Defense counsel argued this call was also irrelevant and unduly prejudicial, and it was also clearly based on inaccurate information. R. 864, l. 20 – 865, l. 12. The judge overruled the objections to that call also. R. 265, ll. 11-12.

Casey Scruggs was obviously the state's key witness, she was alive, and she testified against appellant during his trial. On the third jail call, before this Court, appellant said he learned "somebody killed her," and "the bitch is dead." Appellant then asserts the state now had "no evidence," and "no case" against him.

Discussion

In State v. King, ___ S.C. ___, 810 S.E.2d 18 (2017), the Supreme Court held that the trial court abused its discretion in admitting the entirety of a fifteen-minute recording of King's jail telephone calls. The Court reasoned that the calls were relevant to establishing the defendant's ownership of the cell phone that was used to call the cab company on the day the cab driver was shot. However, the Court in King reasoned that other evidence established this fact without the prejudicial tone of the jail calls. Therefore, the Court held that the trial court erred

regarding the comparative probative value, and the prejudicial effect of the jail calls evidence. See Rule 403, SCRE; State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013).

Here, defense counsel made coherent correct objections to each of the three jail calls. Even if each of these calls had some relevance, the probative value of each call was substantially outweighed by its unduly prejudicial effect. The jail call evidence in this case was simply not needed as there was evidence which, if believed, placed appellant at the scene of the crime. It was a jury determination whether appellant shot anyone or whether he was guilty by reason of accomplice liability.

Appellant made no admissions on the jail calls. Yet, the tone of the calls, as this Court will discover upon reviewing them, had appellant coming across as a callous, loud, and threatening person regarding matters irrelevant to this case -- but tending to show he was happy about hearing a witness had been murdered -- where this hearsay information was simply false *if it was about Casey Scruggs and this case*. If appellant were talking about some other case, some other bad act, it is was simply irrelevant, and unduly prejudicial. See Rule 404 (b), SCRE.

The danger in these jail calls was that they would be interpreted by a jury to reveal that appellant needed to be incarcerated even if he did not commit the crimes alleged in this case. Again, the tapes made appellant out as a callous, loud, and threatening man. This suggested a jury decision on an impermissible, improper basis. See State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001).

As in State v. King, the judge here abused his discretion by allowing the three jail calls into evidence, and he did so on an improper basis. The judge reasoned that appellant was not denying guilt to the charges on the jail tapes, therefore they should be admitted as statements against his penal interest, as seen above. See Rule 804 (b)(3), SCRE. That was error. See State

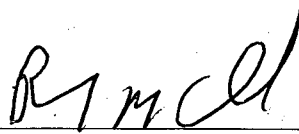
v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992); State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988).

Whatever relevance the jail tapes had in this case, if any, was substantially outweighed by their unduly prejudicial effect, and they should not have been admitted into evidence. Rule 403, SCRE; State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992); State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988).

Finally, this Court respectfully should not find beyond a reasonable doubt that the error in the admission of the jail calls in this case did not contribute to the verdict. The evidence in this case did not present a coherent narrative firmly establishing appellant's guilt, and drug infested brains of the witnesses do not warrant confidence in the jury verdicts. The error was not harmless. See State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012).

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of April, 2018.

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Honorable J. Derham Cole, Circuit Court Judge

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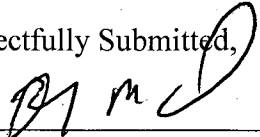
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steven Richard Lewis states:

1. He is Chief 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 J. Derham Cole, which was held on May 22 - 24, 2017, 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 Steven Richard Lewis.

Respectfully Submitted,


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of April, 2018.

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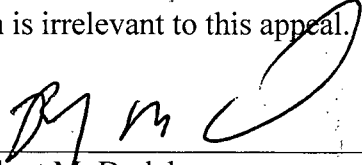
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Entire Trial transcript;
- (3) State's Exhibit 80 (jail calls CD).

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

April 4, 2018


Robert M. Dudek
Chief Appellate Defender

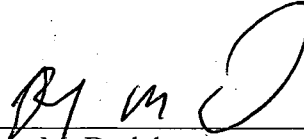
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ATTORNEY FOR APPELLANT

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."

April 4, 2018.



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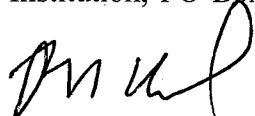
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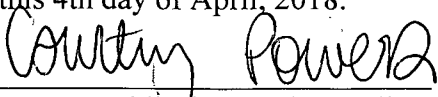
APPELLANT

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 Donald J. Zelenka, 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 Steven Richard Lewis, 372738, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 4th day of April, 2018.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of April, 2018.


Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.