

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

CARY GLENN RYALS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000570

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Ryals' directed verdict motion when the state did not prove that the initial traffic stop was legal because the stop was based on Officer Ellwood's opinion that Ryals was driving intoxicated because his car was weaving slightly but Officer Kornahrens, who was State certified in DUI impairment, found that Ryals was not impaired?

STATEMENT OF THE CASE

On May 12, 2015, the Berkeley County Grand Jury indicted Ryals on the charge of habitual traffic offender. App. 210 – App. 211. On June 1, 2015, Ryals proceeded to trial before the Honorable Kristi Lea Harrington and a jury. Ryals was represented by Frampton Durban, and the state was represented by Mason West and Kamila Szymczynska. App. 1. The jury returned a verdict of guilty as indicted. App. 102, ll. 1 – 23. The judge sentenced Ryals to five years¹ for the habitual traffic offender charge and revoked in full the ten-year probation sentence for assault and battery of a high and aggravated nature (ABHAN). App. 111, ll. 1 – 21.

Ryals did not appeal his conviction, nor his sentence nor his probation revocation. App. 196.

On January 28, 2016, Petitioner Ryals filed an application for post-conviction relief (PCR). The state filed a return on June 13, 2016. App. 195. An evidentiary hearing was held on December 4, 2017 before the Honorable Michael G. Nettles. Ryals was represented by Rodney Davis, and the state was represented by Julie Coleman. App. 134.

The PCR judge issued an order on March 1, 2018 denying Petitioner Ryals' PCR application and dismissing it with prejudice. The judge did grant Ryals a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). App. 209. The judge found that there was an intent to appeal as trial counsel filed a notice of appeal improperly with the solicitor's office instead of with the clerk's office. App. 141, ll. 18 – 25.

This Anders brief is submitted pursuant to White v. State, *supra*, accompanied by a petition for a writ of certiorari.

¹ At his PCR hearing, Ryals informed the court that he completed the sentence for the habitual traffic offender in June 2017. He was incarcerated for the probation revocation. App. 176, ll. 12 – 22.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred in denying Ryals' directed verdict motion when the state did not prove that the initial traffic stop was legal because the stop was based on Officer Ellwood's opinion that Ryals was driving intoxicated because his car was weaving slightly but Officer Kornahrens, who was State certified in DUI impairment, found that Ryals was not impaired? Rule 403, SCRE, provides that although evidence may be relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Relevant Facts

In 2014, Officer Jon Ellwood worked with the Hanahan Police Department. On March 1, 2014, he observed a black Corvette which failed to signal a turn 100 feet before the turn but waited until he was making the turn. Officer Ellwood followed the vehicle and noticed it was traveling slower than the speed limit. App. 29, ll. 9 – App. 30, ll. 8.

As the officer followed the vehicle, he noticed that it drifted into the right fog lane “a little bit.” The officer thought that that behavior was “consistent with impaired driving.” At that point, Officer Ellwood made a traffic stop. App. 30, ll. 9 – 24. He identified Petitioner Ryals as the driver of the Corvette. When the officer asked the driver for his license, Ryals handed him someone else's driver's license. The passenger said he was the owner and provided the registration and insurance cards. According to Officer Ellwood, Petitioner Ryals could not provide a driver's license. App. 31, ll.1 – 25.

Officer David Kornahrens was called by Officer Ellwood to assist as Officer Kornahrens was state certified in DUI impairment and administering the field sobriety test. Officer Kornahrens found that Ryals was “not appreciably impaired to drive.” App. 31, ll. 1 – 25; App. 42, ll. 1 -25; App. 44, ll. 1 – 13.

When Officer Ellwood checked with the Department of Motor Vehicles on Ryals' driver's license, the officer learned that Ryals' license was suspended. Ryals had not been able to produce a driver's license. App. 32, ll. 1 – 9. Officer Ellwood initially charged Ryals with driving under suspension (DUS). When they arrived at the police station, Officer Ellwood learned that Ryals had had several DUS charges and had already been deemed a habitual traffic offender. Therefore, Officer Ellwood charged Ryals with the habitual traffic offender instead of DUS. App. 34, ll. 1 – 25.

On May 12, 2015, the Berkeley County Grand Jury indicted Petitioner Ryals on the charge of habitual traffic offender. App. 210-App. 211. On June 1, 2015, Ryals proceeded to trial before the Honorable Kristi Lea Harrington and a jury. Ryals was represented by Frampton Durban, and the state was represented by Mason West and Kamila Szymczynska. App. 1.

During the trial, Officers Jon Ellwood and Officer David Kornahrens testified regarding their interaction with Petitioner Ryals on March 1, 2015, and his arrest for habitual traffic offender. App. 29, ll. 1 – App. 44, ll. 12. Then Marie Waring with the DMV testified concerning Ryals' driving record. She produced a copy of the official notice to Ryals dated May 20, 2009 of his being declared a habitual traffic offender. The notice listed three dates when he was charged with DUS. The notice informed him that he could not drive until the suspension period had ended which would have been June 19, 2014. The suspension period was listed as June 19, 2009 ending June 19, 2014. App. 44, ll. 23 – App. 47, ll. 25; Supp. App. 7.

Ms. Waring testified that the three dates of convictions for DUS for Ryals were:

Arrested 12/27/2007—Conviction 05/05/2009

Arrested 07/12/2008---Conviction 08/27/2008

Arrested 12/07/2007---Conviction 01/15/2008

App. 48, ll. 1 – 20.

Ms. Waring explained that the official notice was mailed certified to his home address. She had a document showing Ryals signed for the mail on May 22, 2009. The receipt was received by DMV on May 26, 2009. App. 49, ll. 1 – App. 52, ll. ; Supp App. 15. .

At the close of the state's evidence, defense counsel made a motion for a directed verdict based on a lack of probable cause for the traffic stop. Counsel argued that the traffic stop was not legal as there was no reason to stop Ryals initially. If he had not been stopped, the police would not have "found any of this that was in his background." Counsel argued that the police could not stop someone based on speculation. App. 53, ll. 3 – 15. The judge denied the motion for a directed verdict. App. 54, ll. 1 – 25.

Ryals then testified that he had been employed with the State Port Authority in Charleston for seventeen years. App. 61, ll. 10 – 25. In March 2014 when he was stopped, he did not know that his driver's license had been suspended. He explained that he was charged in 2010 with DUS but that charge was dismissed. Then he was stopped after that and was initially charged with DUS. Then the officers came back and told him he was not charged with DUS. Therefore, he believed that he was not under suspension. App. 62, l. 1 – App. 64, ll. 6.

Ryals testified that he did not receive the certified notice from DMV informing him of his habitual traffic offender status. He denied signing the certified signature card. He said if he had received the notice, he would have appealed. App. 64, ll. 7 – App. 66, ll. 19.

Before Ryals testified, the judge told Ryals that he was going to authorize Mr. Hamilton to remove the leg irons from Ryals. The judge asked Ryals if the judge had any cause for concern.

Ryals responded: “I will comply with everything, ma’am. I wish I was dressed better than I am presently.” The judge then said to bring in the jury. App. 60, ll. 16 – App. 61, ll. 6.

Defense counsel renewed his directed verdict motion at the close of the evidence. App. 81, ll. 1 – 25.

The jury returned a verdict of guilty as indicted. App. 102, ll. 1 – 23. The judge sentenced Ryals to five years in prison. Because of the conviction for habitual traffic offender, the judge also revoked in full the ten-year probationary sentence Ryals was under for a conviction for assault and battery of a high and aggravated nature on January 28, 2013. App. 106, ll. 1 – App. 111, ll. 21.

Ryals did not appeal his conviction, nor his sentence nor his probation revocation. App. 196.

Discussion

When balancing the danger of unfair prejudice against the probative value, when determining whether to admit evidence, the determination must be based on the entire record and will turn on the facts of each case. State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014).

Evidence which is sufficient to raise a strong suspicion of the guilt of the accused is not sufficient to constitute any evidence from which the guilt of the accused may be fairly and logically deduced. State v. Totherow, 263 S.C. 275, 210 S.E.2d 228 (1974).

The motion for a directed verdict should be granted where evidence merely raises a suspicion of guilt or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt. State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976).

If the evidence is consistent with both innocence and guilt, it cannot support a conviction. United States v. Varoz, 740 F.2d 772 (10th Cir. 1984).

South Carolina Code Section 56-1-1020 defines an habitual offender:


A habitual offender shall mean any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a), (b) and (c) committed during a three-year period; provided, that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes of this article as one offense:

- (a) Three or more convictions, singularly or in combination of any of the following separate and distinct offenses arising out of separate acts:
 - (1) Voluntary manslaughter, involuntary manslaughter or reckless homicide resulting from the operation of a motor vehicle;
 - (2) Operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs;
 - (3) Driving or operating a motor vehicle in a reckless manner;
 - (4) Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked, except a conviction for driving under suspension for failure to file proof of financial responsibility;
 - (5) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used;
 - (6) Failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identity;

The trial court erred in denying Ryals' directed verdict motion. There was confusion and doubt of the prior convictions the state used as the basis for the habitual traffic offender charge. The state did not prove sufficiently the three prior convictions.

CONCLUSION

Based on the above, certiorari should be granted, and Petitioner's convictions and sentences reversed, and his case remanded for the grant of a directed verdict.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of September, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

CARY GLENN RYALS,

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V.

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RESPONDENT

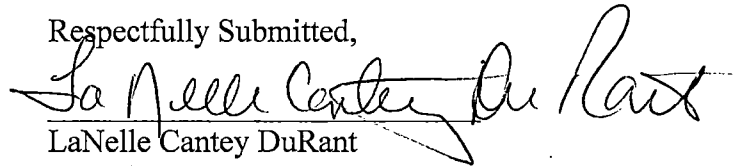
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cary Glenn Ryals states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on December 4, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Cary Glenn Ryals.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender


ATTORNEY FOR APPELLANT

This 24th day of September, 2018.

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."

September 24, 2018.


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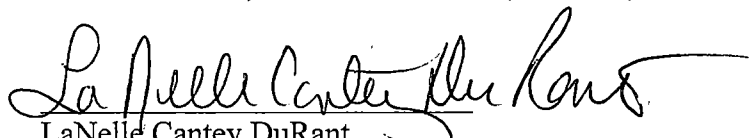
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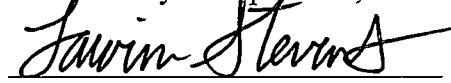
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State has been served on Cary Glenn Ryals, 364293, at Trenton Correctional Institution, 84 Greenhouse Rd, Trenton, SC 29847, this 24th day of September, 2018.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of September, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.