

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAROD TARRELL BOSTICK,

APPELLANT

APPELLATE CASE NO 2017-002319

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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SC Court of Appeals

 ORIGINAL

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing an agent from the South Carolina Law Enforcement Division and the chief of the Estill Police Department to identify Appellant from a surveillance video when the testimony implied that both witnesses knew Appellant because of past criminal activity?

STATEMENT OF THE CASE

In December of 2015, the Jasper County Grand Jury indicted Appellant, Jarod Bostick, for murder, burglary first degree and possession of a weapon during the commission of a violent crime, indictments #2015-GS-27-345, 346, 349. Following pre-trial hearings on August 25, 2017, and October 17, 2017, Appellant proceeded to jury trial October 23, 2017, with co-defendants Casey K. Jones Jr, and Casey K. Jones Sr. before the Honorable Carmen T. Mullen. Joshua Koger represented Appellant at trial. Jared Newman represented Jones Jr. and Stephen Plexico represented Jones Sr. The jury found Appellant and Jones Jr. guilty as charged. The jury acquitted Jones Sr. Judge Mullen sentenced both Appellant and Jones Jr. to thirty (30) years for murder, fifteen (15) years consecutive for burglary and five (5) years consecutive for the weapons charge. A timely notice of intent to appeal was served on November 6, 2017. This appeal follows.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Fripp, 396 S.C. 434, 438, 721 S.E.2d 465, 467 (Ct.App.2012) (quoting State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)).

ARGUMENT

The trial judge erred in allowing an agent from the South Carolina Law Enforcement Division and the chief of the Estill Police Department to identify Appellant from a surveillance video when the testimony implied that both witnesses knew Appellant because of past criminal activity.

The jury found Appellant and co-defendant, Jones Jr., guilty of the fatal shooting and burglary of Jeremiah Wilson in his home. Wilson was a drug dealer who had been robbed before. (R. pp. 327-330). On the day of the shooting, June 3, 2015, cameras recorded activity around the outside of Wilson's house. (R. p. 319, lines 6-21). The surveillance video shows three men with what appear to be guns enter and leave Wilson's house. The video was marked as State's exhibit #98 and admitted in evidence at trial without objection. (R. p. 385, line 17 – p. 386, line 1). The video is the only evidence implicating Appellant in the crimes.

Prior to trial the State proffered the testimony of Agent Katie McCallister with the South Carolina Law Enforcement Division [SLED] in regard to her efforts to identify the three subjects in the surveillance video. (R. p. 60, line 2 – p. 61, lines 1-24). Agent McCallister showed the surveillance video to Agent Jeff Croft with SLED, Chief Collins with the Estill Police Department, Deputy Dominique Coleman with the Estill Police Department, Craig Proctor King and Starsheika Scott. (R. p. 60, lines 18-21). Agent McCallister testified that Agent Croft identified Appellant as one of the men in the surveillance video. (R. p. 63, lines 1-24). Agent McCallister also testified that Chief Collins identified both Appellant and co-defendant Jones Jr. on the video. (R. p. 67, line 9 – p. 68, line 1). King and Scott also identified Appellant and Jones Jr. (R. p. 64, line 12 – p. 65, 66, 267, lines 1-8). Deputy Coleman did not identify Appellant but identified Jones Jr. and Jones Sr. (R. p. 68, lines 13 – p. 69, lines 1-25).

Appellant objected to the admission of the identification testimony. (R. p. 172, lines 2-23; p. 173, line 1 – p. 174, lines 1-9). Appellant argued that pursuant to Rule 403, SCRE, that the law enforcement identifications were more prejudicial than probative in light of the fact that two non-law enforcement witnesses could testify as to identity. (R. p. 173, lines 5-24). Appellant additionally argued, “My second motion was to limit the scope in which the two law enforcement officers are going to – as far as their knowledge of Mr. Bostick, but I think that Jones stated that she’s going to put limitation on that.” (R. p. 174, lines 1-5). The judge overruled the objection and found the identification testimony proper. Both Agent Croft and Chief Collins testified at trial, in front of the jury and identified Appellant as one of the three men seen in the surveillance video. (R. p. 495, line 1 – p. 496, lines 1-5; p. 504, line 15 – p. 505, lines 1-17). The trial judge erred in allowing the identification testimony from Agent Croft and Chief Collins.

In State v. Fripp, 396 S.C. 434, 439, 721 S.E.2d 465, 467 (Ct. App. 2012), the South Carolina Court of Appeals wrote:

Rule 701 of the South Carolina Rules of Evidence explains when lay witness testimony is admissible. If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training. Rule 701, SCRE; State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996). “Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Rule 704, SCRE.

In Fripp the Court found that the identification of Appellant from store surveillance video by a store manager and employee met the requirement of Rule 701, SCRE. The present case is distinguished by the fact that two of the identification witnesses were with law enforcement,

implying that they knew Appellant from prior criminal activity rather than just a store manager and clerk observing a person inside the store, as in Fripp.

In State v. Mitchell, 399 S.C. 410, 731 S.E.2d 889, (Ct. App. 2012), the South Carolina Court of Appeals found that the probative value of a **single** officer's testimony identifying Appellant as the person in photos taken from a deer camera on top of a refrigerator during a burglary was not outweighed by the danger of unfair prejudice. In the present case the identification testimony was more prejudicial because given by **both** a SLED agent and the chief of police rather than the single officer in Mitchell. The probative value of the identification testimony in the present case was very low as other non-law enforcement witnesses could testify to identification. The probative value of the law enforcement identification testimony was outweighed by the danger of unfair prejudice in the jury inferring that Agent Croft and Chief Collins knew Appellant because of prior criminal activity.

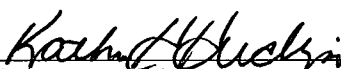
In State v. Tate, 298, S.C. 104, 341 S.E.2d 380 (1986), the South Carolina Supreme Court held the admission into evidence of a six-man photographic array containing a mug shot of the defendant was reversible error. In Tate the Court noted that the photographs in question were typical police photographs taken when a person was arrested. The Court noted that it had held that the introduction of a mug shot was reversible error unless it is shown that: (1) the State had a demonstrable need to introduce the photograph; and, (2) the photographs themselves if shown to the jury, must not imply that the defendant had a prior criminal record; and (3) the photograph must not be introduced in such a manner as to draw attention to the source or implication of the photograph. State v. Robinson, 274 S. C. 198, 262 S.E.2d 729 (1980); State v. Denson, 269 S.C. 407, 237 S.E.2d 761 (1977). The Court held in Tate that the first two prerequisites were not met in that case. The

same is true in this case. The State did not need the law enforcement testimony and the source improperly implied that Appellant had a prior criminal record.

The law enforcement identification testimony improperly placed Appellant's character into evidence. The error was not harmless. The State's case was based solely on identification from the surveillance video. There was no forensic evidence linking Appellant to the crimes. The judge abused her discretion in admitting the identification testimony from Agent Croft and Chief Collins.

CONCLUSION

Based on the above argument, this Court should reverse the convictions and sentences and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

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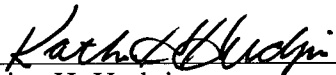
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jarod Tarrell Bostick 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 Carmen T. Mullen, which was held on October 23-27, 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 Jarod Tarrell Bostick.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 7th day of January, 2019.

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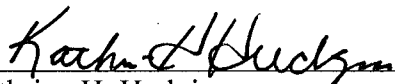
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) August 25, 2017, pre-trial hearing transcript;
- (3) October 17, 2017, pre-trial hearing transcript;
- (4) October 23-27, 2017, trial transcript;
- (5) State's exhibits #2 thru #14 – photos;
- (6) State's exhibits #36-#68 – photos;
- (7) State's exhibit #69 – statement by Casey K. Jones Jr.;
- (8) State's exhibit #70 - Miranda;
- (9) State's exhibits #71 thru #73- photos;
- (10) Defendant's exhibit #1- Motion to Sever
- (11) State's Memorandum in Support of Joinder
- (12) Order Denying Motion for Severance
- (13) State's exhibit #1 (CD of 911 call)- **TO BE TRANSPORTED**
- (14) State's exhibit #15 (CD of video)- **TO BE TRANSPORTED**
- (15) State's exhibit #98 (DVD of video)- **TO BE TRANSPORTED**

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

January 07, 2019


Kathrine H. Hudgins
Appellate Defender

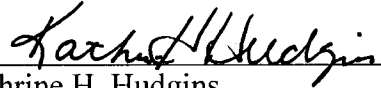
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ATTORNEY FOR APPELLANT

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."

January 07, 2019.



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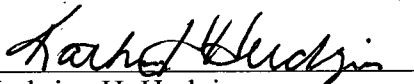
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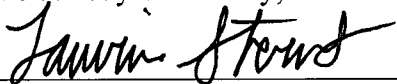
APPELLANT

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 Melody J. Brown, 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 Jarod Tarrell Bostick, 223326, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of January, 2019.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2019.

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