

ORIGIN

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD GOODEN,

APPELLANT

APPELLATE CASE NO. 2011-202546

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in admitting Gooden's 1992 conviction for strong armed robbery for impeachment purposes. This was subject to a Rule 403 analysis for prejudice since it was distinguished from State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). It was too remote in time, despite the ten year time admission requirement.

STATEMENT OF THE CASE

In March 2011, the Georgetown County Grand Jury indicted Ronald Edward Gooden on the charge of attempted murder. On October 26-27, 2011, Gooden proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. Gooden was represented by Reuben Goude, and the state was represented by Erin Bailey. The jury found Gooden guilty of the lesser offense of assault and battery of a high and aggravated nature (ABHAN). Judge Culbertson sentenced Gooden to the maximum sentence of twenty years. R. 109, ll. 1 – 4. Gooden’s attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in admitting Gooden's 1992 conviction for strong armed robbery for impeachment purposes. This was subject to a Rule 403 analysis for prejudice since it was distinguished from State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). It was too remote in time, despite the ten year time admission requirement.

Ronald Gooden, a forty-one year old single man, lived in Andrews, South Carolina as a child, and moved away when he was twenty. He returned to Andrews in 2009 which was about one year before this incident. R. 32, ll. 3 – 25; R. 33, ll. 1 – 12.

Gooden lived in a trailer that belonged to his father. However, his living conditions were poor as he had no electricity, no water, no stove or refrigerator, and no vehicle. He had only a bed. R. 34, ll. 1 – 25. He would go to Shaw's Corner Store to eat a hot dog and a drink because it was only about a half mile from his house. He washed cars to earn money. R. 34, ll. 24 – 25; R. 35, ll. 1 – 15; R. 41, ll. 16 – 19.

At one point, about two weeks before this incident, Gooden allowed Johnny Bradshaw to move in with him. R. 35, ll. 16 – 25; R. 36, ll. 1 – 4. Jackie Shaw, the owner of Shaw's Corner Store, told him that the rumor was that Bradshaw was gay. Gooden said he confronted Bradshaw who admitted he was. Then Gooden made him move out. R. 36, ll. 5 – 25; R. 37, ll. 1 – 23.

There were three men who also hung out at Shaw's Corner Store which included the victim, Curtis Anderson, and his friends, Gerry Chandler and Greg Tisdale. R. 39, ll. 10 – 13; R. 37, ll. 24 – 25. Anderson accused Gooden of being gay, and he and his friends made vulgar comments about possible sexual activities between Gooden and Bradshaw. R. 38, ll. 20 – 25; R. 39, ll. 1 – 25; R. 40, ll. 1. Gooden begged them to stop, and to leave him alone.

But they continued. They invited him to a barbecue to make fun of him. R. 40, ll. 2 – 25; R. 41, ll. 1 – 12.

Later on another day, they were all in the parking lot at Shaw's, and the three men pulled knives from the trunk of their car and put them to Gooden's neck. R. 41, ll. 13 – 25; R. 42, ll. 1 – 25. Then two or three days before the incident, he was sleeping in his trailer, and someone shot into his trailer. R. 43, ll. 15 – 25; R. 44, ll. 1 – 9. When he asked Anderson about it, Anderson told him it wasn't the first time he tried to get someone. R. 44, ll. 10 – 25; R. 45, ll. 1 – 8.

A couple of days later on October 22, 2010, Gooden went to Shaw's store after work. Anderson and his two friends started making nasty comments to Gooden again. Gooden testified that he told them to stop "lying on him or he was going to set your ass on fire." R. 46, ll. 1 – 25; R. 47, ll. 1 – 8.

A heated argument began. Tisdale threatened to get his gun and walked out. R. 47, ll. 8 – 25; R. 48, ll. 1 – 4. Gooden knew that Anderson and Chandler had each killed a person in the past, and he was scared. R. 48, ll. 5 – 25. Gooden left and went home. He cut a bush axe in half to use if they pulled a gun on him. He then told himself he was not a killer. He returned to the store to get his cell phone which he left there to charge. R. 49, ll. 14 – 25.

When he arrived, he saw the three men returning to the store also. He went in and got his cell phone. R. 50, ll. 1 – R. 51, ll. 1 – 25. Once in the store, Anderson made a motion to him like a pistol as though he were going to shoot him. R. 52, ll. 1 – 25; R. 53, ll. 1 – 13. Gooden then went outside, grabbed a gas can he saw earlier, went back into the store, threw the gas on Anderson, and lit it. Anderson caught on fire. R. 53, ll. 14 – 25; R. 54, ll. 1 – 25; R. 55, ll. 1 – 3.

When the police arrived, Gooden decided to turn himself in. He walked up to the police and told them he did it. Gooden believed the three men were going to kill him. He just wanted them to leave him alone. R. 55, ll. 4 – 25; R. 56, ll. 1 – R. 5, ll. 24.

Curtis Anderson testified that he was burned extensively as he suffered third degree burns on much of his body. He spent three months in the burn center in Augusta and one month in a rehabilitation center. R. 27, ll. 5 – 23; R. 29, ll. 6 – 25; R. 30, ll. 1 – 21.

During his testimony, Gooden told Anderson he was sorry this had happened as he did not mean to mess him up. R. 53, ll. 10 – 13.

During pretrial motions, defense made a motion asking the solicitor to disclose the impeachable offenses they intended to use when Gooden testified. The state told the judge they were planning to use a conviction for strong arm robbery (SAR) from 1992. It met the ten year requirement because he violated parole in 1999 and returned to prison. He was released from confinement January 18, 2002, so the conviction fell within the ten year requirement for an impeachable offense. R. 6,, ll. 21 – 25; R. 7, ll. 1 – 18.

Defense counsel argued that the SAR was a 1992 conviction which was almost twenty years ago for the conviction, and the offense occurred before that. Counsel argued the offense was too remote, was not relevant, and the prejudicial effect outweighed any credibility issues. Counsel asked that this SAR conviction be excluded if Gooden testified. R. 7, ll. 20 – 25; R. 8, ll. 1 – 8.

When the judge asked what the probative value was, the state responded that the sole issue was Gooden's credibility because self-defense was an issue in the case based on Gooden's claims of actions by the victim. The state said the victim had a violent record also. The judge said the prior conviction would have a "pretty" prejudicial effect if the state was

using it to show him as a violent person. The judge said the SAR was not evidence in this case. R. 8, ll. 8 – 25; R. 9, ll. 1.

The state argued that SAR was a crime of dishonesty. The judge said he still had to balance the probative versus the prejudicial value. R. 9, ll. 5 – 22. Defense counsel argued that the victim had a violent record, and he and his friends were picking on Gooden. Counsel argued again that the SAR was twenty years ago. The judge ruled that he was not going to let the SAR come in as the prejudicial effect outweighed the probative value. R. 9, ll. 2 – 25; R. 10, ll. 1 – 25; R. 11, ll. 1.

The state then cited the case of State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. filed March 3, 2003) which held that armed robbery was a crime of dishonesty and the court did not need to weigh the prejudicial effect versus the probative. R. 11, ll. 2 – 25. The judge said he thought everything had to be weighed for prejudicial effect. R. 12, ll. 1 – 16. After reviewing the case, the judge reversed his ruling, and said that SAR was a crime of dishonesty and could be used to attack Gooden's credibility. R. 12, ll. 17 – 25.

When Gooden testified, on cross examination, the state asked Gooden if he had been convicted of SAR, and he said he had. R. 58, ll. 7 – 17.

The jury found him guilty of the lesser included offense of ABHAN. R. 108, ll. 17 – 20.

Rule 402 SCRE provides that “all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.”(emphasis supplied)

Rule 403, SCRE provides where evidence is relevant it “may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...” Unfair prejudice “means an undue tendency to suggest decision on an improper basis...” State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

State v. Al-Amin, *supra*, provided that armed robbery was a “crime of dishonesty” and a prior armed robbery conviction was admissible to attack the defendant’s credibility; it was the larcenous element of taking property of another which made the action dishonest. The Court also held that the admission of prior criminal acts involving dishonesty to attack the credibility of a witness did not require the balancing of the probative value against its prejudicial effect.

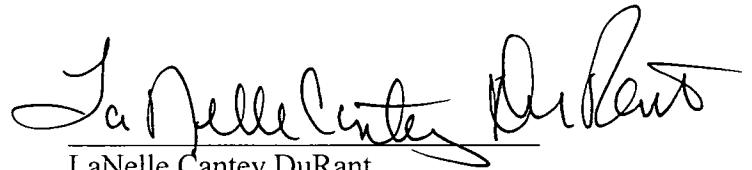
However, in Estelle v. Williams, 425 U.S. 501 (1976), the United States Supreme Court ruled that due process under the Fourteenth Amendment guaranteed a defendant the fundamental right to a fair trial. South Carolina’s due process clause is found in Article I, Sect. 3 of the South Carolina Constitution.

Gooden’s case is distinguished from Al-Amin in that the conviction in Al-Amin’s case was only twelve years old. Gooden’s conviction was almost twenty years old. The conviction was for SAR and not armed robbery. The judge in Gooden’s case believed the SAR was too prejudicial to be admitted and was not relevant until he read the holding in Al-Amin.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a horizontal line underneath the name.

LaNelle Cantey DuRant
Appellate Defender

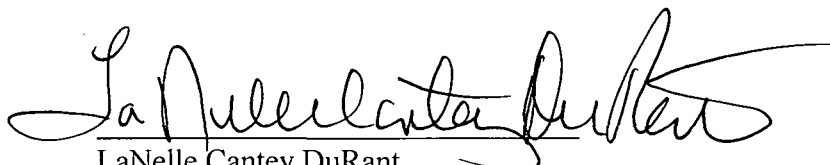
ATTORNEY FOR APPELLANT

This 12th day of December, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

December 12th, 2012

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

LaNelle Cantey DuRant
Appellate Defender

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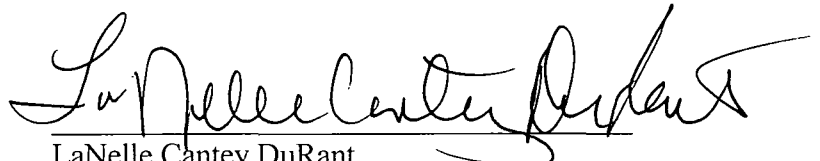
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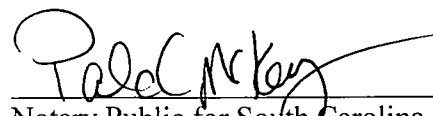
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of December, 2012.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of December, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.