

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

KENNETH S. BOLDEN,

APPELLANT

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FINAL BRIEF OF APPELLANT

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**SC Court of Appeals**

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Bolden's motion to suppress the videotape from Officer Robert Davis's patrol car which was prejudicial to Bolden due to the officer's comments on the tape?

## STATEMENT OF THE CASE

On January 19, 2011, the Greenville County Grand Jury indicted Kenneth Stephone Bolden on the charge of breaking and entering a motor vehicle. On July 11, 2011, Bolden proceeded to trial before the Honorable Edward W. Miller and a jury. Bolden was represented by Nihar M. Patel, and the state was represented by Lisa A. Bentley. The jury returned a verdict of guilty as indicted. Judge Miller sentenced Bolden to thirty months. Bolden's attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

The trial court erred in denying Bolden's motion to suppress the videotape from Officer Robert Davis's patrol car which was prejudicial to Bolden due to the officer's comments on the tape.

On December 10, 2009, Jimmie Mahaffey was watching television in her home around eleven o'clock in the evening when she saw the dome light in her car come on. She looked and saw a man in her car. R. 9, ll. 1 – 25; R. 10, ll. 1 – 25; R. 11, ll. 1 – 25. She called her husband who was sleeping, and then dialed 911. R. 12, ll. 1 – 25.

Timothy Mahaffey went to the front door when he heard his wife scream. R. 15, ll. 1 – 25; R. 16, ll. 1 – 25; R. 18, ll. 1 – 11. He saw a man in his unlocked 1997 Honda Accord car. He identified Bolden, who was sitting at the defense table, as the man who was in his car. R. 17, ll. 14 – 15; R. 18, ll. 12 – 25; R. 19, ll. 13 – 14.

When Mahaffey asked the man what he was doing, the man replied that he was sorry, but he thought this was his girlfriend's car. He asked Mahaffey not to have him "locked up." Mahaffey's wife had called the police, and they arrived very quickly. R. 19, ll. 13 – 25; R. 20, ll. 1 – 25.

Mahaffey testified that nothing was taken from his car—not even the two packs of cigarettes in the console. R. 22, ll. 22 – 25; R. 23, ll. 1 – 15.

Officer Michael Jackson arrived first and only talked to the victims. R. 31, ll. 1 – 25; R. 34, ll. 1 – 18. Officer Robert Davis arrived about five seconds after Officer Jackson. As he was approaching the home of the Mahaffey's, he saw a black male walking away from the victim's house. Officer Davis stopped the man who did not try to run away but got into the back of the patrol car as Officer Davis instructed him to do. Officer Davis then drove he

man to the incident scene to find out what was going on. Officer Davis identified Bolden in court as the man he saw. R. 35, ll. 6 – 25; R. 36, ll. 1 – 25; R. 37, ll. 1 – 6.

Bolden told Officer Davis that he was in the car looking for keys that belonged to a friend. Bolden at first told the officers he was Jeffery Bolden who was his brother. R. 37, ll. 1 – 25. Bolden gave them his real identification when he arrived at the detention center, and the officers saw his identification card. R. 42, ll. 5 – 25; R. 43, ll. 1 – 14. Bolden's defense attorney argued to the jury in his closing that Bolden used his brother's name because Bolden had an outstanding child support warrant. R. 54, ll. 8 – 16.

Prior to Officer Davis's testimony, defense counsel objected to the video from Officer Davis's patrol car being admitted because he argued that the officers were talking on the video which was "editorializing" or which involved them giving their opinions. Counsel argued that it was the jury's job to form their own opinions, and he felt the officers' opinions would be prejudicial pursuant to Rule 403, SCRE. R. 26, ll. 2 – 25; R. 27, ll. 1 – 25; R. 28, ll. 1 – 25; R. 29, ll. 1 – 19.

The state argued that the video gave the jury a perspective of the actual crime scene. R. 27, ll. 1 – 8. The judge ruled that the video fit into the *res gestae* of the event, and was not overly prejudicial. R. 29, ll. 20 -25.

During Officer Davis's testimony, the state admitted the video into evidence and published it to the jury.<sup>1</sup> Defense counsel objected which the judge overruled. R. 39, ll. 1 – 20.

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<sup>1</sup> The video was not transcribed into the record. R. 39, ll. 1 – 11.

Rule 403, SCRE provides:


Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or undue delay, waste of time, or needless presentation of cumulative evidence.

The video which allowed the opinions of the police officers to come into evidence was prejudicial to Bolden. Because the officers were considered people of authority, there was a reasonable probability that the jury was influenced by the video.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of February, 2013.

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."

February 7, 2013

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant".

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CERTIFICATE OF SERVICE

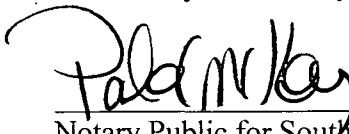
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of February 2013.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 7th day of February, 2013.



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