

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED

AUG 05 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES ANDERSON,

APPELLANT

APPELLATE CASE NO. 2012-213188

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in not granting a mistrial after an emotional outburst in the courtroom tainted the jury?

STATEMENT OF THE CASE

On August 18, 2011, Charles L. Anderson, Jr. ("Anderson") was indicted for murder and armed robbery. On October 1 – 4, 2012, Anderson was tried before the Honorable Roger L. Couch and a jury. R. 1. Anderson was tried along with a co-defendant, Lauri Danielle Hollis ("Hollis"). R. 1. Christopher Thompson represented Anderson. R. 1. Ryan McCarty represented Hollis. R. 1. Abel Gray and Daniel Cude represented the State. R. 1. The jury convicted Anderson on both charges. R. 638, l. 18 – 639, l. 15. Judge Couch sentenced Anderson to concurrent terms of life imprisonment for murder and thirty years' imprisonment for armed robbery. R. 651, l. 24 – 652, l. 7. Anderson timely filed and served a notice of appeal and this appeal follows.

ARGUMENT

The trial court erred in not granting a mistrial after an emotional outburst in the courtroom tainted the jury.

On April 7, 2011, Officer William Foster (“Foster”) of the Spartanburg Public Safety Department responded to a call about a shooting. R. 122, ll. 5 – 13. He was the first officer to arrive on the scene. R. 122, ll. 12 – 13. He saw a man lying face down on the ground. R. 122, l. 14 – 123, l. 17. He rolled the man over. R. 123, ll. 6 – 10. Officer Foster saw what appeared to be a bullet wound in the left center of his chest. R. 123, ll. 6 – 10. A crowd of eight to ten people were standing around the bleeding man. R. 122, ll. 18 – 20. The man's name was Stephen Means (“Means”). R. 130, ll. 12 – 13.

Officer Foster’s dashboard camera activated when he turned on his blue lights. R. 1, 123, l. 18 – 124, l. 3. The video from Officer Foster’s patrol car was published to the jury. R. 125, l. 18 – 126, l. 8. At the 18:48:48 mark, the video shows Means strapped to a stretcher with a ventilator mask being wheeled away by emergency personnel. State’s Exhibit 5. The court reporter noted that sobbing was heard in the courtroom. R. 126, l. 8. Judge Couch instructed the solicitor to stop the video and excused the jury. R. 126, ll. 9 – 14. Judge Couch then told the gallery that emotional outbursts would not be tolerated during the trial. R. 126, l. 22 – 127, l. 23. Following the testimony of several short witnesses, court adjourned for the evening. R. 151, ll. 9 – 10.

The next morning, Anderson moved for a mistrial. R. 154, – 155, l. 17. Anderson argued that the “outburst from the victim’s mother or sister ... tainted the jury” R. 155, ll. 3 – 17. Anderson also argued that the outbursts from the victim’s family upset the jurors and prevented Anderson from receiving a fair trial due to the jurors’

sympathy for the victim's family. R. 155, ll. 3 – 17. Co-defendant's counsel added to the argument, stating that the video had little probative value. R. 155, ll. 19 – 24. The trial judge denied the motion for a mistrial. R. 156, l. 19 – 159, l. 16.

“It is the duty of the trial judge to see that the integrity of his court is not obstructed by any person or persons whatsoever.” State v. Stewart, 278 S.C. 296, 303, 295 S.E.2d 627, 631 (1982). In Stewart, a murder case, the court granted a mistrial because of outbursts from spectators. The spectators glared at the jury and responded with laughter at the witnesses. Id. The trial court failed to conduct any inquiry into whether the spectators' actions prejudiced the jury. Id.

Just as in Stewart, the trial judge failed to conduct any inquiry into the possible prejudice of the jury. Judge Couch said, “When that emotional outburst reached a point that I felt that it could have some effect in the case, I stopped the trial, removed the jury from that situation, cautioned the people involved not to be involved in that sort of activity.” R. 157, ll. 16 – 20. In this statement, Judge Couch essentially admitted that the emotional outburst affected the case.

The emotional outburst undoubtedly aroused sympathy for the victim's family and made a difference in this close case. The jury deliberated for almost an entire day, asked several questions, and asked for the replay of testimony. R. 622, l. 21 – 247, l. 9. Furthermore, the evidence against Anderson was of dubious quality.

The two primary pieces of evidence connecting Anderson to the crime had severe flaws. First, the alleged eyewitness, MB, gave several different versions of events. MB was seventeen years old and claimed at trial that she witnessed the shooting. R. 184, l. 12 – 187, l. 19. Officer Jennifer Watson (“Watson”) testified that on the day after the

shooting, she gave a photographic lineup of possible suspects, including Anderson, to MB. R. 243, l. 15 – 244, l. 5. MB did not identify Anderson. R. 243, ll. 15 – 25. Officer Watson also testified that MB gave several different versions of what she witnessed. R. 244, ll. 19 – 24. In the statement she gave the day of the shooting, MB said that she was in a friend's apartment holding a baby when she heard a gunshot. R. 206, ll. 2 – 13. MB told the police that she opened the door and looked outside. R. 206, ll. 8 – 13. She saw Means “on the grass bent over.” R. 206, ll. 10 – 12.

MB's trial testimony was completely different from what she told police on the day of the shooting. At trial, she claimed that instead of being inside an apartment holding a baby, she was outside in a car at the time of the shooting. R. 181, l. 11 – 183, l. 4. She claimed that several people were standing near their car. R. 183, ll. 4 – 10. Hollis was in this group. R. 183, ll. 9 – 14. She claimed that Hollis, “started talking about some dude and was talking about how – I didn't really catch on to it; she was just like something about they were about to get somebody because somebody had snitched on somebody.” R. 183, ll. 15 – 21. MB said that this point, Hollis walked away from the car. R. 183, ll. 22 – 23. Hollis and the other men with her supposedly then walked toward Means. R. 184, ll. 12 – 24. MB said she looked down at her radio and then heard a gunshot. R. 184, l. 25 – 185, l. 2. When she looked up, Means was falling to the ground and people were “running away.” R. 185, ll. 1 – 2.

She claimed that Hollis was in a group of four people in a circle around Means. R. 185, ll. 3 – 11. In direct contrast to her inability to identify anyone associated with the crime the day after the incident, MB made an in-court identification of Anderson as one of the individuals surrounding Means. R. 186, l. 14 – 187, l. 12. She claimed that

Anderson was the only person with a gun in his hand. R. 186, l. 14 – 187, l. 12. On cross-examination, she admitted that Anderson was “easy to pick out” because was sitting at the defense table. R. 189, ll. 12 – 21.

On cross-examination, MB said that someone named “Little Man” was one of the group gathered around Means. R. 200, ll. 8 – 10. She also knew several other people who were gathered around, including someone named “J.P.” R. 201, ll. 6 – 13. She admitted that she did not know Little Man or Anderson. R. 200, l. 19 – 201, l. 5. Defense counsel asked:

Q. And you basically are going off of Little Man and my client based upon what somebody else told you their name was; is that right?

A. I guess so.

R. 201, ll. 19 – 22.

The only other piece of evidence tying Anderson to the crime was a gun found between the mattresses of his bed. R. 322, ll. 15 – 20. Unsurprisingly, since it was found in his bed, the gun contained Anderson’s DNA. R. 451, ll. 16 – 25. The State’s DNA expert explained the concept of DNA transference from skin cells left behind by people. R. 457, l. 1 – 67, l. 17. Furthermore, it was by no means certain that Anderson knew the gun was at his house. Anderson consented to allow the police to search his room. R. 327, l. 9 – 328, l. 9. Another person charged with the murder named Quartez Lyles had been at Anderson’s house and in his room after the shooting. R. 545, l. 3 – 546, l. 22. It makes little sense that Anderson would have allowed a search if he knew the murder weapon was in his room.

Two of the State's main witnesses were unable to provide any relevant information. Alice Carroll claimed to witness the murder. R. 213, l. 13 – 215, l. 2. When asked if she could identify anyone in the courtroom connected with the murder, Carroll looked around and then asked the solicitor, "Will you – I don't know where to look at. Can you tell me where to look?" R. 215, ll. 7 – 8. She was ultimately unable to identify anyone.

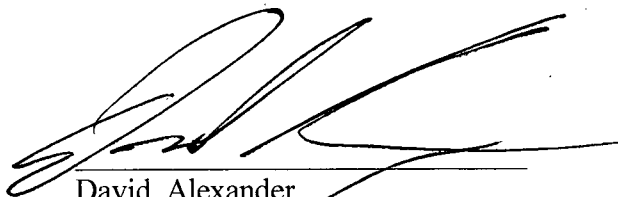
The State also called Perry Crain ("Crain"), who their lead investigator had referred to as their "main witness." R. 500, ll. 20 – 23. Crain testified that he witnessed the shooting. R. 218, l. 22 – 219, l. 6. Crane testified that he could not identify the murderer in the courtroom and did not remember his face. R. 219, ll. 7 – 17.

With the weakness of the State's case, the emotional outburst from the victim's family swayed the jury and caused the adverse verdicts. This created an unfair prejudice against Anderson and prevented him from receiving a fair trial from an impartial jury. See U.S. Const. amend. VI (guaranteeing the right to a fair and impartial jury). Since the tainted jury made the difference in this close case, the trial judge abused his discretion by not granting a mistrial and not enquiring into the impact of the outburst on the jury.

CONCLUSION

For the foregoing reasons, the Court should reverse appellant's convictions and grant him a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of August, 2013.

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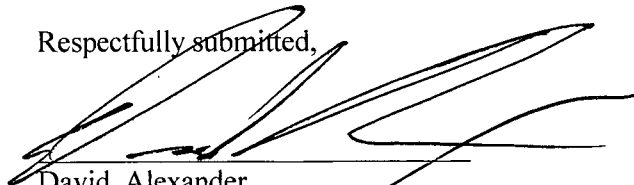
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Anderson states:

1. He is 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 Roger L. Couch, which was held on October 5, 2012, 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 Charles Anderson.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of August, 2013.

STATE OF SOUTH CAROLINA

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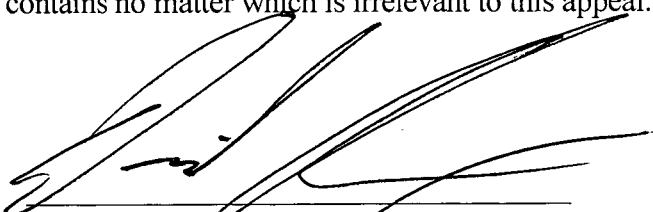
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript volumes 1 and 2;
- (3) State's Exhibit 5 (to be transported).

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

August 5th, 2013



David Alexander
Appellate Defender

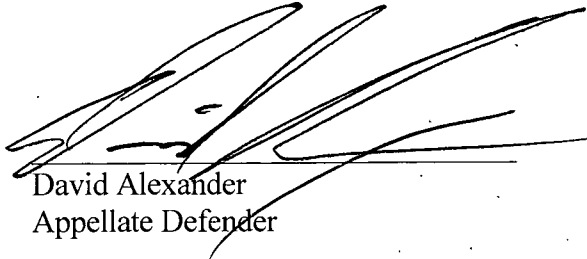
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Attorney for Appellant

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 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."

August 5th, 2013



David Alexander
Appellate Defender

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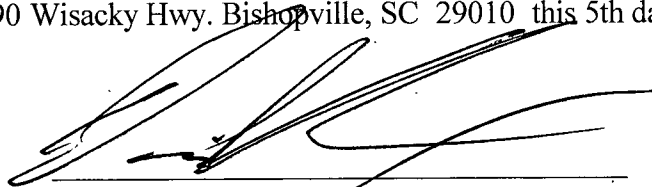
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APPELLANT

APPELLATE CASE NO. 2012-213188

CERTIFICATE OF SERVICE

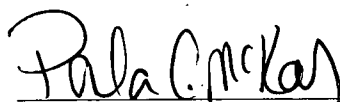
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Charles Anderson, # 338944 at Lee Correctional Institution, 990 Wisacky Hwy. Bishopville, SC 29010 this 5th day of August, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of August, 2013.

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