

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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JAN 03 2014

Appeal from Lancaster County

J. Ernest Kinard, Jr., Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HEYWARD R. TRUESDALE

APPELLANT

APPELLATE CASE NO. 2013-001129

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing a state's witness to refer to appellant as a "thug" before the jury because this was a negative character portrayal of appellant, who had not placed his character in issue at trial, which in turn prejudiced the case for the defense.

STATEMENT OF THE CASE

Appellant Heyward Rashard Truesdale was convicted of murder, armed robbery, and possession of a firearm during the commission of a violent crime per jury trial held at the May 2013 term of the Lancaster County General Sessions Court before Judge Ernest Kinard. Appellant was sentenced to imprisonment for an aggregate period of thirty years. William Frisk represented appellant at trial, and Assistant Solicitor Doug Barfield appeared on behalf of the state in the case.

Appellant appealed his trial court convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in allowing a state's witness to refer to appellant as a "thug" before the jury because this was a negative character portrayal of appellant, who had not placed his character in issue at trial, which in turn prejudiced the case for the defense.

At trial, state's witness Douglas Lewis testified that on September 21, 2011, he was standing shoulder to shoulder by Harry Edward Blakeney in the driveway of Blakeney's residence (located in Lancaster County) with their backs turned from appellant and Jerel Davis, who were standing near Blakeney's driveway at that time also. Lewis stated that soon after Blakeney opened an envelope to remove cash to give to him (Lewis),¹ he heard gunshots being fired from behind them. Lewis stated that he fell when he was hit by gunfire. Lewis claimed that he saw Jerel Davis and appellant walk close to Blakeney, and that Davis, who was in possession of the gun, fired gunshots at Blakeney. Lewis added that appellant was not in possession of a gun. Lewis received medical treatment for his gunshot wound, but Blakeney died from his gunshot wounds. Tr. 430, l. 9 – p. 454, l. 7.

State's witness Prayton Truesdale² testified at trial and explained that she was in the company of Davis, and appellant, who is her brother, and Shaun McCrory on the date in question when she heard appellant say something to the effect that there was a guy in Kershaw who inherited millions of dollars and that a "lick"

¹ Blakeney had inherited a large amount of money and was in the process of buying items from people in order to start an antique pawn shop style business.

² Prayton Truesdale was charged with conspiracy to commit armed robbery and accessory after the fact to murder and accessory after the fact to armed robbery.

(robbery) was needed to get some of that money. Prayton Truesdale stated that she was in the area near Blakeney's residence when she heard gunfire. Thereafter, Prayton Truesdale stated that she drove to her mother's house nearby where she encountered Davis, appellant, and McCrory; and that after the gunfire ceased, they all got inside of her car (white Chevy Malibu), as she drove away from the scene. Minutes later, as she filled up her car gas tank at a local gas station in the area, they were seen by police. A BOLO had been issued for a white Chevy Malibu in connection with the case. Subsequently, all four occupants inside the car were then apprehended by police. Tr. 469, l.4 - p. 494, l.11.

State's witness Jerel Davis³ testified at trial and explained that appellant mentioned a potential "lick" in the neighborhood in question, but that McCrory did not participate in the robbery and shootings. Davis explained that he and appellant were present when Blakeney was taking money out of an envelope to pass to Lewis, and that immediately thereafter he (Davis) fired gunshots at Blakeney at appellant's behest. Davis explained that when Blakeney fell, they got the money and then they (Davis, appellant and McCrory) hopped in Prayton Truesdale's white Chevy Malibu car (Prayton was driving) and fled. Tr. 502. l. 4 – p. 528, l.3.

State's witness Shaun McCrory testified that on the date in question, he was in the company of appellant and Davis and heard appellant mentioning a robbery at Blakeney's house. However, McCrory testified that he was on another street speaking with a female when he heard gunshots coming from the direction of

³ Davis pled guilty to voluntary manslaughter, attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime.

Blakeney's residence. McCrory testified that David shot Blakeney. Tr. 331, l. 8 – p. 352, l. 24.

Officer Charles Thomas Kirkley of the Lancaster County Police Department testified that he saw a vehicle fitting the description of the get-a-way car parked at the gas station on the date in question and proceeded to apprehend and place all four individuals in the car in police custody. Tr. 174, l. 16 – p. 189, l. 23.

Prior to trial, defense counsel moved to have all of the state's witnesses refrain from using appellant's street name (appellant was apparently referred to as "Thug Life") while testifying before the jury so as not to infer or imply that the shooting was gang-related. The solicitor "agreed" that this was "sort of prejudicial" and warned the witnesses not to "refer to [appellant] in that fashion." Tr. 29, l. 16-17; Tr. 29, l. 23-p. 30, l. 19.

However, during the direct examination of state's witness Freedonia Truesdale, who is appellant's and Prayton Truesdale's sister, appellant's street name ("thug") surfaced as follows:

Solicitor: Did you see Jerel Davis anywhere around your momma's house at that time? I'm going to jump ahead and we'll come back. Did Prayton's car stay there?

Freedonia Truesdale: It stopped in the road.

Solicitor: But did it stay there after it stopped in the road or did it leave?

Freedonia Truesdale: No, it left.

Solicitor: When it left who was driving?

Freedonia Truesdale: Prayton.

Solicitor: When it left who was in it?

Freedonia Truesdale: Just normal folks and Prayton and my brother, Thug (appellant).

Solicitor: Heyward. You're talking about Heyward?

Freedonia Truesdale: Yes.

Solicitor: Use names, let's not use nicknames. Tr. 392, lines 1-14.

Freedonia Truesdale's testimony at trial was that she was in the neighborhood when the gun shots were fired on the day in question and that she saw Davis and McCrory behind Blakeney after the shots were fired. Freedonia Truesdale stated that she saw appellant walking "up the road" minutes after the shooting. Freedonia Truesdale claimed that she saw Prayton driving her car near the scene and that Davis, appellant, and McCrory were in the car with her. Freedonia Truesdale stated this was probably a planned robbery. Tr. 380, l. 10- p. 399, l. 11.

Evidence of prior bad acts is inadmissible to show that the accused is a bad person or has the propensity to commit the crime charged. State v. Peake, 302 SC 378, 396 S.E. 2d 362 (1990). State v. Smith 309 SC 409, 419 S.E. 2d 816 (1992).

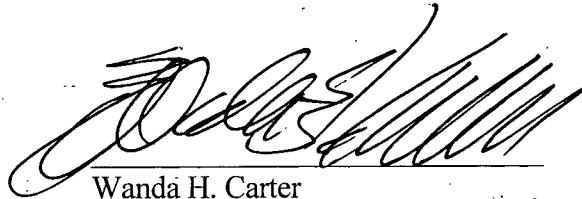
Undoubtedly, the jury in this case surely interpreted appellant's nickname (Thug) as a negative character portrayal of him. This moniker suggested a gang mentality, which surely conjured up criminal images of violence and criminal activities, which in turn suggested that appellant possessed a criminal character and was certainly predisposed to engage in criminal activities, and hence was probably guilty of the crimes for which he was on trial as well. The prejudice connected to this error was so great that the prejudicial value outweighed any probative value. The trial judge's error in allowing the jury to hear

appellant's nickname denied appellant of the right to a fair trial guaranteed under the Fourteenth Amendment and article 1 § 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that his case be reversed and remanded to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of January, 2014.

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V.

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APPELLATE CASE NO. 2013-001129

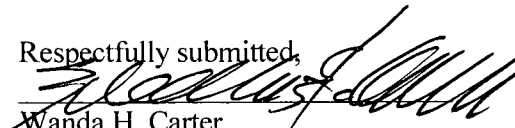
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Heyward R. Truesdale states:

1. She is Deputy Chief 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 J. Ernest Kinard, Jr., which was held on May 16, 2013, 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 Heyward R. Truesdale.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 3rd day of January, 2014.

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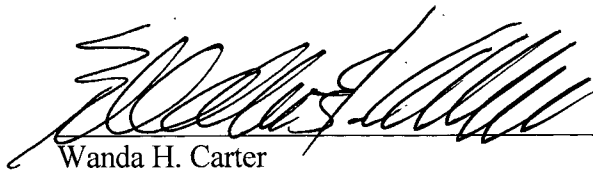
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript

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

January 3, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

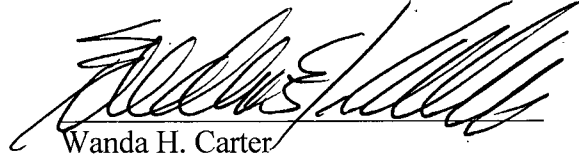
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PO Box 11589
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(803) 734-1343

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."

(January 3, 2014)



Wanda H. Carter

Deputy Chief Appellate Defender

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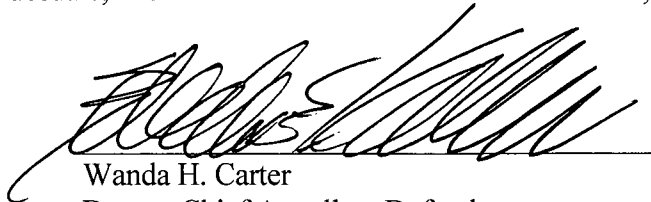
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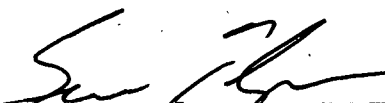
CERTIFICATE OF SERVICE

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 Heyward R. Truesdale, # 313568 at Lee Correctional Institution, this 3rd day of January, 2014.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022