

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

RECEIVED

OCT 22 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing witness Dyshunn Hunter to testify that after the apartment fire another man was beating appellant and telling him, "You want to burn people up? You want to burn people up?" since this was highly prejudicial hearsay which indicated the third party aggressor had reason to believe appellant was guilty of arson?

STATEMENT OF THE CASE

Appellant was indicted for two counts of murder and two counts of arson in the first degree as a result of an apartment fire in Sumter County in which two minors were killed. R. p. * Appellant's case was called to trial on August 12, 2013 before the Honorable George C. James, Jr. and a jury. Timothy W. Murphy represented appellant. Ernest E. Finney, III, John P. Meadors and Tyler Brown represented the state. Tr. 1.

At the conclusion of the trial the jury found appellant guilty on each of the four counts. Tr. 43, ll. 14-24. Judge James sentenced appellant to life imprisonment for the murder counts, and imposed a consecutive thirty-year prison term for the arson counts. Tr. 491, l. 16 – 492, l. 2.

This appeal follows.

ARGUMENT

The court erred by allowing witness Dyshunn Hunter to testify that after the apartment fire another man was beating appellant and telling him, "You want to burn people up? You want to burn people up?" since this was highly prejudicial hearsay which indicated the third party aggressor had reason to believe appellant was guilty of arson

Introduction

Two children were killed in an apartment fire in this case. The state maintained appellant, who was in a relationship with the mother of the children, Liz Young, deliberately set the fire at Apartment 62, Lantana Apartments in Sumter.

Relevant Facts

Shauntee Williams testified that Liz Young came to her nearby apartment on the evening of March 27, 2012. Tr. 106, l. 18 – 108, l. 9. Young asked to use the restroom and Williams said she noticed that Young was upset. "So I asked her to sit down and talk to me." Tr. 108, l. 8 – 109, l. 10.

Young told Williams she had been arguing with her boyfriend, appellant, that evening and that he had "threatened to burn the house down." Tr. 109, ll. 4-23. Williams said Young was crying at the time but Young agreed to stay at her apartment long enough to have a piece of chicken that Williams was cooking. Tr. 110, ll. 1-7.

While they were waiting for the chicken to finish cooking they "heard the siren and she [Young] left the house." Tr. 110, ll. 3-13. Williams said then received a phone call telling them that Young's apartment was on fire. Tr. 110, ll. 11-17; Tr. 126, l. 8 – 133, l. 5.

SLED Agent Sterling Seals testified that the apartment fire had three points of origin. The first was at the top of the bedroom stairs. The second point was in the master bedroom. And the third area of origin of the fire was in a folding chair. Tr. 181, ll. 5-18.

Seals opined that no accelerants were used in the fire but that it was deliberately set. Seals offered the fire could have been set with a match, a cigarette lighter or a candle. Tr. 181, l. 1 – 182, l. 18. Over objection, Seals testified in his opinion the fire at various places in the apartment was twelve hundred degrees Fahrenheit, and in another place five hundred degrees Fahrenheit. Tr. 195, l. 12 – 196, l. 23.

Anastasia Young was the daughter of Elizabeth Young, and the two minor victims in the fire, Robert Jackson and Aliyah Jackson were her brother and sister. Tyrmaine Young was her other brother. Tr. 207, ll. 9-18. She testified her mother, her two brothers and sister lived with appellant in Apartment 62, Lantana Apartments in Sumter. Tr. 209, ll. 3-10.

Young said she put the two minor children to bed in their bunk beds that night, and then she “went back downstairs and watched TV.” Tr. 215, l. 24 – 216, l. 6.

Young remembered that her mother, Liz, and appellant were arguing that evening when they got home after the children were already in bed. Tr. 216, l. 18 – 217, l. 5. Young claimed appellant said: “He’d kill all of us.” Tr. 217, ll. 23-24.

She also maintained appellant was supposed to stay at the apartment after her mother left but that he followed her and her mother part way towards Williams’s apartment saying, “fuck you all, fuck you,” and he said “he would burn the house down.” Tr. 218, l. 18 – 219, l. 2. Anastasia continued with went with her mother to Shauntee Williams’ apartment, and appellant went elsewhere. She remembered they sat down for a short time waiting for the

chicken to be cooked and then heard a siren. The children were at Apartment 62 alone. Tr. 220, l. 11 – 221, l. 8.

Dyshunn Hunter had two children with Anastasia Young. Tr. 234, l. 14 – 235, l. 9. Hunter got into an argument with his mother, Anna, and he said that Liz Young told him he could stay with her and find a job. Tr. 238, ll. 8-17. This was the fateful March 27, 2012 day. Tr. 242, ll. 11-23.

Hunter remembered that appellant and Liz Young were drinking that evening. He remembered an argument between appellant and Young where appellant told Young: “Fuck you bitch, fuck you bitch, I’m going to burn this mother-fucker up, fuck you bitch.” Tr. 242, ll. 11-23.

Hunter testified they were driving to the hospital after the apartment fire and one of the family members spotted appellant. Hunter said he chased after appellant and his best friend, Trymaine Young, caught appellant and started beating him. Hunter said Trymaine was telling appellant as he beat him: “You want to burn people up? You want to burn people up?” Defense counsel’s hearsay objection was overruled. Hunter then added that he was dragging appellant on the ground while Trymaine continued to hit appellant. Tr. 253, l. 21 – 255, l. 8.

Trymaine Young was the son of Elizabeth Young and the brother of the deceased minors in the fire. Tr. 267, l. 7 – 268, l. 3. On cross-examination Trymaine admitted that appellant did not want to move into his mother’s apartment but wanted his mother and the two deceased children to move into a house with him. Trymaine also acknowledged appellant did not want Trymaine to move in with them. Tr. 275, l. 22 – 276, l. 5. Trymaine

also admitted that he was beating appellant following the fire because he had been told appellant was responsible for the fire. Tr. 277, ll. 7-12.

Elizabeth Young testified she had dated appellant for about a month prior to the fire, and appellant had begun to move into her apartment. This would contradict other testimony that appellant and Young had known each other for a long time, and that they had a very volatile “on and off” relationship. Tr. 321, ll. 1-14.

Young claimed that on the March 27, 2012 night of the argument that appellant had threatened to burn her apartment down. Young said this was not the first time appellant had made such a threat but they did not take him seriously on the prior occasion. “No one really paid it any attention.” Tr. 339, l. 23 – 340, l. 2.

Young acknowledged appellant was receiving a social security disability check but she denied he ever paid partial rent on her apartment. She did acknowledge that appellant signed over the authority to cash his checks to her. Tr. 343, ll. 3-11.

Henry Dingle, appellant’s younger brother, claimed appellant had “an off and on relationship” with Liz Young for about ten years. Henry claimed on the night of the fire that appellant came to his apartment, and said that he was in trouble. Henry claimed appellant told him that he had been shot in the leg, and that he had done something “really bad and that he was going to jail for a long time.” Tr. 379, ll. 2-15.

Henry maintained that when he asked appellant what he had done, appellant responded: “Don’t you hear the fire trucks and ambulance?” Henry claimed appellant admitted he “burned Liz’s apartment down with all the children in it and I know at least two or three of them were babies.” Tr. 379, ll. 2-15.

Appellant called two witnesses, Betty Smalls and Rosa Kelley. Smalls was the sister of Timothy and Henry Dingle, and she testified that Henry Dingle was “a pathological liar.” Tr. 414, ll. 2-5.

Rosa Kelley was a cousin of appellant and Henry. She also opined that Henry Dingle was a “habitual liar.” Tr. 418, ll. 1-4.

Discussion

Rule 801(c), SCRE provides that “hearsay” is a statement other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.

In State v. Caulder, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986), the defense offered the testimony of a neighbor that she received three phone calls from an unidentified caller regarding the location of the body. The question was whether this testimony was offered to prove its truth which was that someone other than the defendant committed the crimes.

The defense argued that the testimony was offered to prove something other than the matter asserted. This Court determined that the testimony was offered to prove that someone other than the defendant knew something about the location of the body, which was essentially the truth of the matter asserted. Collins, South Carolina §16.3 B.6 at p. 479 (2d ed. 2000).

Here, the judge ruled that Hunter’s testimony that another man, Trymaine, was beating appellant following the fire and telling appellant that is what he deserved for “burning people up” was not inadmissible hearsay. The court reasoned that the testimony

was not offered to prove the truth of the matter asserted. Essentially, the judge ruled the testimony was not offered to show that appellant set the fire. That was incorrect.

In State v. Sims, 387 S.C. 557, 694 S.E.2d 9 (2010), the Court dealt with hearsay testimony which the state alleged was properly admitted under the co-conspirator exception. The victim in the Sims case was Juan Anderson. Davis and Ruff acknowledged helping Sims hide Anderson's body and destroy evidence. Davis testified extensively regarding the events that followed Anderson's death. Davis testified that at about 3:00 in the morning appellant Sims and Natalie Englis showed up at her doorstep. Davis claimed she was unaware of Anderson's death at the time, or that her friends were planning to help Sims dispose of Anderson's body. Davis said she asked Englis what had happened and *Englis told her that Sims had murdered someone*. As in this case, defense counsel's hearsay objection was overruled. The Supreme Court held that this testimony about what Davis claimed Englis told her was inadmissible hearsay.

As seen above, in this case, Hunter testified that Trymaine was beating appellant and telling him this is what he deserved for setting the fire. This testimony was offered for the truth of the matter asserted, and it was highly prejudicial hearsay and should have been excluded.

The defense's case consisted of attacking Henry Dingle as a "pathological liar" and a "habitual liar" where he had claimed that appellant had admitted his role in starting the fire. The remainder of the state's case against appellant largely consisted of the fact that appellant and Young had been arguing that night, and that appellant allegedly threatened her. The defense clearly attempted to show the jury that young children were improperly left alone in the house that night when the tragic fire started, and that

appellant was being used as a scapegoat for their unlawful act of leaving the young children alone. As such, the error in admitting this hearsay evidence was not harmless beyond a reasonable doubt. Harmless error is a doctrine that should be “employed guardedly ... and on a case by case basis.” State v. Morris, 289 S.C. 294, 297, 345 S.E.2d 477, 479 (1986). Error is only harmless when it could not reasonably have affected the result of the trial. State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985).

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of October, 2014.

STATE OF SOUTH CAROLINA

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George C. James, Jr., Circuit Court Judge

THE STATE,

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V.

TIMOTHY D. DINGLE,

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APPELLATE CASE NO. 2013-001785

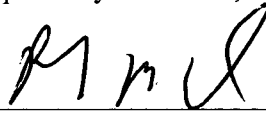
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy D. Dingle states:

1. He is Chief 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 George C. James, Jr., which was held on August 12-14, 2013, 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 Timothy D. Dingle.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M D', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 22nd day of October, 2014.

ATTORNEY FOR APPELLANT

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 indictments;
- (2) Entire trial transcript.

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

October 22nd, 2014



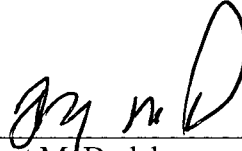
Robert M. Dudek
Chief Appellate Defender

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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."

October 22, 2014.



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Chief Appellate Defender

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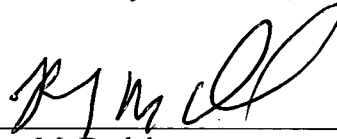
TIMOTHY D. DINGLE,

APPELLANT

APPELLATE CASE NO. 2013-001785

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal 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 Timothy D. Dingle, #298989 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22nd day of October, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of October, 2014.

Rhonda Denise Jaywalk

Notary Public for South Carolina

My Commission Expires: October 17, 2021