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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

DAVID ERIC DIXON,

APPELLANT

APPELLATE CASE NO. 2013-002386  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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(803) 734-1343

ATTORNEY FOR APPELLANT

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### **STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by refusing to redact portions of Appellant's videotaped interview with law enforcement where Lieutenant Seales commented on how the jury would handle certain facts about the case since his comments were improper and likely interfered with the jury's role as sole trier of the facts?

STATEMENT OF THE CASE

A Marlboro County Grand Jury indicted Appellant at the February 26, 2013 term of General Sessions for murder, attempted murder, and possession of a weapon during the commission of a violent crime. R. 425-430. His case was called to trial on October 28, 2013 before the Honorable J. Michael Baxley, and a jury. R. 19. Brandon Steen represented Appellant and Mia David was the assistant solicitor. R. 19.

At the conclusion of the trial on October 31, 2013, the jury found Appellant guilty. R. 405, ll. 6-18. Judge Baxley sentenced Appellant to thirty-five years for murder, five years consecutive for the weapons offense, and thirty years concurrent for attempted murder. R. 422, ll. 6-15.

This appeal follows.

## ARGUMENT

The court erred by refusing to redact portions of Appellant's videotaped interview with law enforcement where Lieutenant Seales commented on how the jury would handle certain facts about the case since his comments were improper and likely interfered with the jury's role as sole trier of the facts.

### **Relevant Facts**

Defense counsel moved pretrial to suppress the oral statement Appellant gave to law enforcement shortly after his arrest or, in the alternative, to redact specific portions of the statement. Specifically, defense counsel explained, "There's two parts where Lieutenant Seales discusses how the jury should handle these facts, and I think it interferes with the jury as the only trier of facts. In that part of the statement, [Seales] says these are the facts and this is what the jury will see as the facts. But those are the only redactions<sup>1</sup> in the alternative of the entire statement being suppressed." R. 75, l. 12 – 76, l. 3.

The first requested redaction, which occurs between 28:35 and 28:45 of the video, states, "This is what the jury is going to hear and if you come in there with a story like that, you know, I mean, it's not going to take them fifteen minutes to convict you." See State's Exhibit No. 50 (CD Statement of David Dixon). The second requested redaction, which occurs between 32:20 and 32:45, states, "The jury is going to be sitting there deliberating and saying well they had to bring him back in there and he didn't even tell the truth or they

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<sup>1</sup> Defense counsel also moved to redact the parts of Appellant's recorded interview that referenced his prior convictions and sentence, which the solicitor agreed to do. Additionally, defense counsel moved to redact Lieutenant Seales' assertion to Appellant during the interview that there was no gunshot residue found on the decedent's hands because this turned out to be false. R. 75, ll. 14-21. Appellant does not challenge on appeal the trial court's refusal to redact this portion of the interview.

can say, well look man, he ain't, he did shoot him, he shot him straight up, he shot him in the back when he was running from him, but he might have thought he was running to get a gun because two witnesses said he pulled a gun on him [inaudible], I mean we don't know that. It's just a theory." See State's Exhibit No. 50 (CD Statement of David Dixon).

The solicitor opposed redacting the portions of the interview where Lieutenant Seales mentions the jury and how the jury would handle certain facts arguing that it was merely an interrogation tactic. She said, "[T]he other two redactions that involve Investigator Jamie Seales. I feel like they should be admitted. As an investigator for our community, he has the right to be dishonest, lie, say whatever he wants, but he had the right to talk about the defendant to get a confession to find out what is going on with the case to solve the crime." R. 76, ll. 9-16. She later argued, "Investigator Jamie Seales . . . knew the statement that the defendant was making was untrue because the defendant was saying they were facing each other when the altercation occurred. Jamie Seales knew he [the decedent] had three shots to the back, so he's thinking, You're not telling me the truth, I need to keep talking and see what I need to say to convince you to tell the truth and be honest." R. 81, ll. 13-22.

Defense counsel responded, "With regard to the jury handling certain facts, Lieutenant Seales is an authority figure, respected figure, and I don't want the jury to think that is what he thinks about the facts, so that is what I need to think also. I mean, Your Honor, I was very exclusive in picking out what I was picking [to redact] - - I mean down to as little as I could do. *I don't want the jury to have anything interfering with their deliberations.*" R. 84, ll. 2-10 (emphasis added).

However, the court ultimately ruled, “Respectfully, I’ll deny your motion with regard to these jury comments for the following reasons. First of all, while the Court makes the initial decision of admissibility [of Appellant’s statement], which I’ll do in a few moments,<sup>2</sup> the jury ultimately makes the decision of voluntariness, I find this evidence is relevant and probative on the issue of whether or not the defendant was overreached, whether the statement was voluntary, whether this is a valid interrogation technique. This is not for the judge to decide, this is for the jury to decide.” R. 84, l. 24 – 85, l. 9.

### **Discussion**

The right to a fair trial by an impartial jury in a criminal prosecution is guaranteed by the Sixth Amendment to the United States Constitution and by Article I, § 14, of the South Carolina Constitution. State v. Stewart, 278 S.C. 296, 303, 295 S.E.2d 627, 630-631 (1982). “Under our Constitution, the jury are the exclusive judges of the facts.” State v. Pruitt, 187 S.C. 58, 196 S.E. 371, 374 (1938).

Our supreme court has long held that a trial judge may not comment on the facts of a case because such comments may improperly influence the jury, which is the sole trier of the facts. See State v. White, 15 S.C. 381, 392 (1881) (“[T]he real object of this clause of the Constitution is to leave the decision of all questions of fact to the jury exclusively, uninfluenced by any expression of the opinion by the judge, whose position would very naturally add great weight to any opinion he might express upon any question of fact arising in a case.”); see also State v. Howell, 28 S.C. 250, 255, 5 S.E. 617, 620 (1888) (“[T]he jury

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<sup>2</sup> The trial court later ruled that Appellant’s recorded interview with law enforcement was admissible after finding Appellant had been properly advised of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and subsequently waived those rights, and that it was “a free and voluntary statement given without duress . . . and without undo influence.” R. 87, l. 18 – 88, l. 22.

must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammelled by any intimation from the judge as to whether a certain fact at issue has been proved or not.”).

A law enforcement officer’s comments on the facts of a case or how the jury should interpret the facts may likewise improperly influence the jury and interfere with the jury’s role as the exclusive trier of the facts. A law enforcement officer, just like a judge, is in a position of authority and, as a result, the jury may be more inclined to adopt his interpretation of the facts. However, jurors must form their own judgment unbiased by any improper influence.

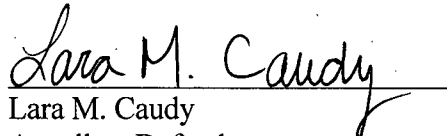
Lieutenant Seals’ statement during the interview that “it’s not going to take them [the jury] fifteen minutes to convict you” may have been interpreted by the jury that they should convict Appellant without hesitation because that is what Seals, a law enforcement officer, believed. Furthermore, Seals’ second statement could have been interpreted by the jury that it should convict Appellant because he could not come up with a plausible reason for shooting the decedent in the back.

It is therefore likely that Lieutenant Seals’ comments improperly interfered with the jury’s deliberations and affected the outcome of Appellant’s trial. These improper comments should have been redacted before the recorded interview was played for the jury. The trial court’s failure to do so warrants a new trial.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse his convictions and sentence and remand this case to the Marlboro County Court of General Sessions for a new trial.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

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THE STATE,

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V.

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APPELLATE CASE NO. 2013-002386

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PETITION TO BE RELIEVED AS COUNSEL

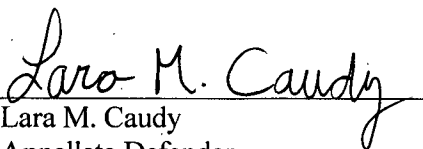
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Counsel for David Eric Dixon states:

1. She is an 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 the Honorable J. Michael Baxley, which was held on October 28-31, 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 David Eric Dixon.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

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

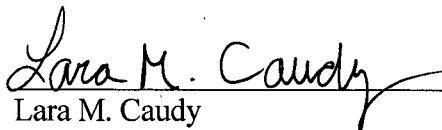
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Entire bond hearing transcript dated August 13, 2013;
- (3) Motion for Production of Evidence, Continuance, Scheduling Order, and to Keep the State's Offer Open filed on September 9, 2013;
- (4) Motion to Suppress Defendant's Statement Pursuant to *Jackson v. Denno* dated October 28, 2013;
- (5) Entire trial transcript dated October 28-31, 2013;
- (6) State's Exhibit No. 50 (CD Statement of David Dixon).

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

July 7th, 2014



Lara M. Caudy  
Appellate Defender

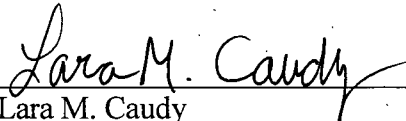
South Carolina Commission on Indigent Defense  
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PO Box 11589  
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Attorney for Appellant

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 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."

July 7, 2014

  
\_\_\_\_\_  
Lara M. Caudy  
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S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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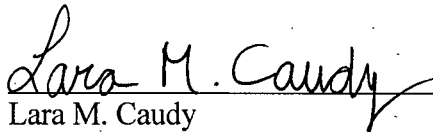
V.

DAVID ERIC DIXON,

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CERTIFICATE OF SERVICE

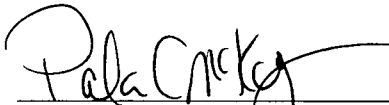
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on David Eric Dixon, #331496 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of July, 2014.



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 7th day of July, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022