

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KESHAWN MELVIN RICE,

APPELLANT

APPELLATE CASE NO. 2018-002074

ANDERS BRIEF OF APPELLANT

RECEIVED
DEC 04 2019
SC Court of Appeals

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing an officer to speculate that Appellant could have left the county during the ten days between the time of the shooting and the time Appellant turned himself in to the police when there was no evidence that Appellant left the county?

STATEMENT OF THE CASE

In March of 2017, the Spartanburg County Grand Jury indicted Appellant, Keshawn Melvin Rice, for murder and armed robbery, indictments #2017-GS-42-1795, 1796. In February of 2018, the Spartanburg County Grand Jury indicted Appellant for burglary first degree, indictment #2018-GS-42-0649. On November 13, 2018, Appellant proceeded to jury trial before the Honorable J. Derham Cole. Richard Harold Warder represented Appellant at trial. Derrick Bruce Balsa prosecuted the case. The jury found Appellant guilty of armed robbery, burglary first degree and the lesser included offense of voluntary manslaughter. Judge Cole sentenced Appellant to thirty (30) years concurrent for each charge. A timely notice of intent to appeal was served on November 19, 2018. This appeal follows.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (“quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial judge erred in allowing an officer to speculate that Appellant could have left the county during the ten days between the time of the shooting and the time Appellant turned himself in to the police when there was no evidence that Appellant left the county.

According to the State's theory of the case, Appellant, along with co-defendants Carnellious "Neal" Stringer, Elian Nava and Kameron Wilson planned to rob a drug dealer. Wilson was the driver. According to Wilson, he first picked up Appellant and Stringer and both had guns. (R. p. 142, line 24 – p. 143, lines 1-19). He then picked up Nava and the three discussed robbing Cesar Mendez and stealing his marijuana. (R. p. 146, line 2 – p. 147, 148, lines 1-24). When they met Mendez, however, he did not have any marijuana. (R. p. 148, lines 5-7). Wilson testified that Mendez got in the car with the others and led them to the home of Thompson "Tom" Demas who had marijuana for sale. (R. p. 148, lines 8-24). According to Wilson, Mendez was unaware of the robbery plans.

Nava testified that, when they got to Tom's house, he and Mendez went inside the garage to buy the marijuana. (R. pp. 202-204). According to Nava, Appellant and Stringer came in the garage door pointing a gun. (R. p. 205, lines 5-8). Nava testified that Appellant and Tom began to fight and then he heard shots. (R. p. 205, lines 9-25). Nava then testified that Stringer shot Tom in the back three times. (R. p. 207, lines 2-5). Nava, Stringer and Appellant ran to the car and Wilson drove away, leaving Mendez at the scene. (R. p. 207, line 17 – p. 208, lines 1-24). Appellant argued at trial that this was not a planned robbery but rather a disagreement about a marijuana purchase that resulted in Nava and Stringer shooting the seller. (R. p. 68, line 18 – p. 69, lines 1-6).

Deputy Kevin Bowen with the Spartanburg County Sheriff's Office questioned Mendez at the scene. The deputy was allowed to testify that Mendez told him that Mr. Nava was involved in the shooting but was not the shooter. (R. p. 112, line 20 – p. 113, lines 1-6; p. 114, line 25 – p. 115, lines 1-11). Mendez told the deputy that two black males fired shots. (R. p. 115, lines 12-15). Mendez did not testify at trial. The police interviewed Nava the day after the shooting and he told them that Appellant and Wilson were involved. (R. p. 210, lines 1-15). The police interviewed Wilson the next day and he also admitted his involvement. (R. p. 158, lines 9-24). Appellant turned himself in ten days later on October 18, 2016. At the time of trial charges were still pending against Nava and Wilson. Prior to Appellant's trial, Stringer pled guilty to murder and armed robbery and received a thirty-year sentence. (R. p. 364, lines 4-17).

During the cross-examination of Richie Foster, a former investigator with the Spartanburg County Sheriff's Office, defense counsel asked about Appellant turning himself in ten days later and the officer agreed that he was not aware of any evidence indicating that Appellant ever left the state, city or county. (R. p. 240, lines 6-22). During re-direct examination the prosecutor asked, "Is there any evidence that his family was hiding him out?" (R. p. 240, line 25 – p. 241, line 1). The officer answered, "We never found him and they never were forth coming on answers of where he might be." (R. p. 241, lines 2-3). The prosecutor then asked, "So he could have left the county to get away from them just as well." (R. p. 241, lines 4-5). Defense counsel objected stating, "That's pure speculation." (R. p. 241, line 7). The trial judge overruled the objection. (R. p. 241, line 9). The prosecutor then asked, "So there's just as much evidence to suggest he might have fled the county and then somebody talked him back, right?" (R. p. 241, lines 10-12). The officer agreed. (R. p. 241, line 13). The trial judge erred in allowing the officer to speculate that Appellant could have left the county during the ten

days between the time of the shooting and the time Appellant turned himself in to the police when there was no evidence that Appellant left the county.

The State presented evidence that after the shooting both Appellant's mother and his girlfriend asked Appellant to turn himself in. (R. p. 233, line 20 – p. 234, lines 1-6; p. 231, lines 21-24). The prosecutor asked, without objection, Officer Kim Parnell with the Spartanburg County Sheriff's Office, "Did she [Appellant's mother] tell you that she went to look for him at Sincere Jeter's house and he had fled?" (R. p. 234, lines 4-5). The officer answered, "Yes, sir. She did." (R. p. 234, lines 6). The State, however, presented no evidence that Appellant left the county. While Appellant waited ten days before turning himself in to the police, there is no evidence that he fled the county. The speculative testimony, unsupported by the record, constituted improper evidence of flight from the county and was prejudicial.


In State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 266 (2006), the South Carolina Supreme Court wrote, "Flight from prosecution is admissible as guilt. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). While the evidence from Appellant's mother and girlfriend was proper, as supported by testimony, the speculative comment about Appellant fleeing the county was not proper. The testimony went beyond the fact that Appellant waited ten days before turning himself in. The testimony improperly called into question Appellant's character by suggesting that Appellant was a fugitive from justice fleeing the county. There was no evidence that Appellate ever left the county. Compare State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) (Evidence that police began an investigation because of reports of criminal activity are admissible. However, identification of an individual as the suspect of a criminal investigation,

based upon speculation and effectively calling into question that individual's character, is not.).

The error requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse Appellant's convictions and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of December, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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PETITION TO BE RELIEVED AS COUNSEL

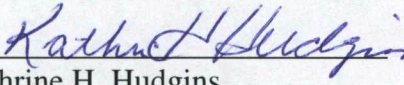
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Counsel for Keshawn Melvin Rice states:

1. She is 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. Derham Cole, which was held on November 12 - 15, 2018, 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 Keshawn Melvin Rice.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of December, 2019.

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Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

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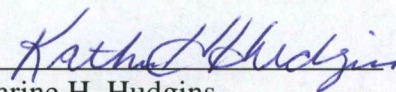
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) Complete trial transcript pp. 1-369.

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

December 4, 2019


Kathrine H. Hudgins
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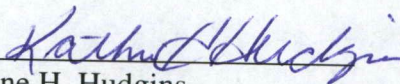
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CERTIFICATE OF COUNSEL

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."

December 4, 2019.



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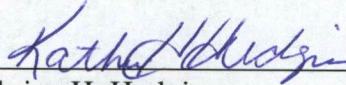
V.

KESHAWN MELVIN RICE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 Melody J. Brown, 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 have been served on Keshawn Melvin Rice, 378305, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of December, 2019.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of December, 2019.



(L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029