

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EDWARD LEE JOSEPH WASHINGTON,

APPELLANT

APPELLATE CASE NO 2019-000976

ANDERS BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in denying Appellant's motion to dismiss the felony DUI charge where the state failed to provide video recording for the duration of law enforcement's interaction with Appellant from the time of his arrest until the time his blood was taken and where only one of the officers provided an affidavit explaining his failure to produce such video recording?

STATEMENT OF THE CASE

Appellant was indicted by the Horry County grand jury for felony DUI resulting in death and leaving the scene of an accident resulting in death. R. 488-489. Appellant's trial was held before the Honorable Steven H. John and a jury from June 3 – 5, 2019. R. 1. Appellant was represented by James Stanko and Clay Pinkerton. The state was represented by Joshua Holford and Cara Walker. R. 1.

The jury found Appellant guilty of felony DUI but not guilty of leaving the scene of an accident. R. 469-470. The judge sentenced Appellant to twenty years imprisonment. R. 482 - 483.

This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). “A court is bound by the trial court’s factual findings unless they are clearly erroneous.” Id. (internal quotation omitted). “On review, this Court is limited to determining whether the trial court abused its discretion.” State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009).

STATEMENT OF FACTS

On October 28, 2016, Ryan Bielawa was struck by Appellant's vehicle and killed while he was walking across a highway near Coastal Carolina University. Olivia Malle testified that she was hanging out with Bielawa and some other friends that night when they decided to walk to the campus dining hall for some "late night food." R. 175, l. 22 – 177, l. 7. Malle, Bielawa, and their other friends were walking down the sidewalk on Highway 544 when Ryan began walking across the highway not within a cross walk. R. 177, ll. 9 – 18; R. 180, l. 17 – 181, l. 19.

Malle recalled: "I heard him get hit, so I looked and I see a shoe fly and a shadow, which I think it was his body. And I turned and I say, [Bielawa] was just hit and my friends started to scream." R. 177, ll. 20 – 22. Kelcee Cramer also witnessed the accident and she testified that the vehicle that struck Bielawa did not stop initially but returned to the scene "five to seven" minutes later. R. 189, ll. 1 – 190, l. 4.

Daniel Baker, a DNR officer, was driving by the Circle K where Bielawa was hit shortly after the accident when he witnessed Appellant fighting a group of people. R. 163, l. 18 – 165, l. 5. Baker approached the group of people who were fighting and detained Appellant. R. 167, ll. 3 – 9. Baker stated that he did not know anything about the collision at that time. R. 167, ll. 16 – 17. After realizing that a fatal car accident had occurred, Baker turned Appellant over to Glen Guyett with the Horry County Police Department. R. 169, ll. 1 – 14.

Guyett testified that he initially placed Appellant under arrest for "the leaving of the scene" until he got more information at which point, he charged Appellant with felony DUI. R. 240, ll. 6 – 21. Guyett claimed that he could smell alcohol on Appellant's breath and that Appellant's eyes were "red and glossy." R. 240, l. 22 – 241, l. 4. Guyett placed Appellant in his

patrol vehicle, read Appellant his Miranda¹ rights, and then took Appellant to the hospital for a possible ankle injury. R. 241, ll. 12 – 22. Guyett further stated that he did not conduct any standard field sobriety tests on Appellant because of Appellant's apparent ankle injury. R. 242, ll. 1 – 8.

While at the hospital, law enforcement obtained a search warrant for Appellant's blood and two blood samples were collected by a nurse. R. 248, l. 16 – 251, l. 9. Appellant's blood samples were tested and found to have an average blood alcohol content of .239. R. 400, ll. 4 – 7.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

ARGUMENT

The trial judge erred in denying Appellant's motion to dismiss the felony DUI charge because the state failed to provide video recording for the duration of law enforcement's interaction with Appellant from the time of his arrest until the time his blood was taken and only one of the officers provided an affidavit explaining his failure to produce such video recording.

Relevant Facts

Defense counsel made a pretrial motion to dismiss the felony DUI charge against Appellant. R. 85, ll. 5 – 10. Counsel called DNR Officer Daniel Baker who was the first law enforcement officer to arrive on the scene of the accident. R. 85, l. 20 – 86, l. 17. Baker was driving his patrol vehicle that night which was not equipped with a camera. Baker also did not have a body-worn camera. R. 86, ll. 20 – 24. However, Baker never submitted an affidavit explaining why he did not have any video of his interaction with Appellant. R. 87, l. 22 – 88, l. 4.

Glenn Guyett, who arrested Appellant on the scene, had a body-worn camera and an in-car camera which were both operational at the time he arrested Appellant. R. 92, l. 13 – 94, l. 10; State's Ex. 1 (Guyett's body-worn camera on file with this Court); State's Ex. 3 (Guyett's in-car camera on file with this Court). Guyett's body-worn camera died while he was at the hospital with Appellant, ending the video recording of his encounter with Appellant. R. 94, l. 11 – 95, l. 4. Guyett provided an affidavit stating the reason for his failure to capture all his interaction with Appellant on video was due to Appellant needing emergency medical treatment. R. 486.

Officer Jeffrey Jordan also testified at Appellant's motion to dismiss hearing. Jordan responded to the scene of the accident around the same time as Guyett and he also had body-

worn camera which was operational at the time. R. 112, l. 9 – 113, l. 12; State’s Ex. 2 (Jordan’s body-worn camera on file with this Court). However, Jordan’s video recording cut off while he was at the hospital and did not capture the blood draw. R. 113, l. 13 – 114, l. 2. Jordan admitted that he never submitted an affidavit explaining why he did not have the complete video recording of his interaction with Appellant. R. 115, ll. 13 – 15.

Defense counsel argued that the felony DUI charge should be dismissed pursuant to City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007) and S.C. Code Ann. § 56-5-2953. Counsel correctly pointed out that this statute requires that a video recording of a DUI arrest must begin no later than the activation of the officer’s blue lights and continue throughout the duration of the incident. R. 118, l. 24 – 119, l. 7. Counsel argued that the first officer on scene, Baker, had no video whatsoever and never submitted an affidavit explaining his failure to produce a video. R. 119, ll. 8 – 14.

Officers Guyett and Jordan’s body-worn cameras both died while they were at the hospital with Appellant at least nine minutes prior to the blood draw. R. 119, l. 21 – 120, l. 3. Counsel argued that the reason the statute requires video is to ensure that juries can see the entire interaction between law enforcement and the suspect. R. 120, ll. 4 – 14. Counsel further pointed out that Suchenski dealt with the same situation which occurred in Appellant’s case, the officer’s video recording ran out of tape, and that resulted in a dismissal of the DUI charge in Suchenski. R. 120, l. 18 – 121, l. 12.

The assistant solicitor responded that Guyett’s in-car camera did begin at the initiation of his blue lights and captured the arrest of Appellant and the advisement of his Miranda rights. R. 123, l. 17 – 124, l. 10. Furthermore, the solicitor argued that Guyett submitted an affidavit saying that it was impossible to video tape Appellant’s conduct at the breath test site or his

performing of field sobriety tests because he was taken to the hospital for medical treatment. R. 125, ll. 12 – 25. The solicitor maintained that the officers in this case had complied with the video requirement as much as they could and submitted an affidavit to explain why the video was incomplete as required by S.C. Code Ann. § 56-5-2953. R. 126, l. 1 – 127, l. 18.

The trial judge ruled that S.C. Code Ann. § 56-5-2953 did not apply to the DNR officer because he was not on the scene to investigate a DUI and knew nothing of the collision when he arrived. R. 128, l. 20 – 129, l. 5. The judge found that Appellant was physically unable to perform field sobriety tests because of his ankle injury and stated that “[the officer] did submit an affidavit as to why his body camera was not working that I believe complies with . . . the requirements.”² The judge further ruled that the missing video was “properly explained by the officer.” R. 129, l. 6 – 130, l. 17. Defense counsel’s motion to dismiss was denied. R. 130, ll. 18 – 19.

Discussion

S.C. Code Ann. § 56-5-2953 mandates that a person who is arrested for DUI “must have his conduct at the incident site and the breath test site video recorded.” However, this video requirement may be excused “if the arresting officer submits a sworn affidavit certifying that the video recording equipment . . . was in an inoperable condition,” or if the officer “submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment.” Id.

In this case, only Guyett submitted an affidavit explaining his failure to produce the entire video recording. Baker and Jordan did not produce video from the incident site or submit

² The trial judge appears to be referencing Guyett here because Guyett is the only officer that submitted an affidavit. The trial judge did not make a specific ruling on Jordan’s failure to produce a complete video of his interactions with Appellant.

an affidavit explaining their failure to comply with S.C. Code Ann. § 56-5-2953. While Baker did not have any video at all, Jordan had some body-worn camera footage from the hospital. However, his body-worn camera footage was incomplete because his camera died several minutes prior to the blood draw being done on Appellant. Jordan admitted that he never submitted a sworn affidavit explaining his failure to submit a full video recording which included the blood draw of Appellant.

In State v. Manning, 400 S.C. 257, 261, 734 S.E.2d 314, 316 (Ct. App. 2012), this Court found that the trial judge properly denied the defendant's motion to dismiss a felony DUI charge. In Manning, this Court found that it was physically impossible for the officer to videotape the defendant's conduct at the incident site because the defendant had already been transported away from the scene for medical treatment prior to the officer's arrival. Id. At 266, 734 S.E.2d at 318. However, the officer in Manning still failed to submit an affidavit which this Court found would have been grounds for dismissal unless another exception applied. Id. The Manning Court held that because the officer was investigating a traffic accident and the defendant was arrested at the hospital, the failure to produce video or an affidavit was not a ground for dismissal. Id.

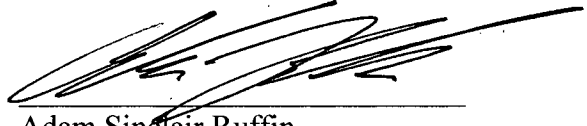
Here, Guyett had video at the incident site and also at the hospital. Unlike in Manning, Guyett was on the scene at the same time as Appellant and placed Appellant under arrest on the scene. Although Appellant was ostensibly taken to the hospital for medical treatment, Guyett also admitted that he took Appellant to the hospital for the purpose of getting a blood sample from him. R. 245, ll. 2 – 9; R. 248, ll. 12 – 23.

The video did not cut off until approximately nine minutes prior to the blood draw taking place and the explanation given by Guyett at the motion to suppress was that his body-worn camera died. R. 94, l. 11 – 95, l. 4. This was a completely different reason than the reason he

gave in his sworn affidavit. In the affidavit, Guyett claimed that it was physically impossible to video record Appellant because he was taken to the hospital. R. 486. This was clearly false because Guyett did have at least some video of Appellant in the hospital. The failure to produce the complete video of Appellant's conduct at the hospital including the blood draw was not because of Guyett's reason given in the affidavit. Therefore, the affidavit was insufficient to excuse Guyett's failure because the reason given in the affidavit was false. The trial judge erred in denying defense counsel's motion to dismiss Appellant's felony DUI charge. See City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007).

CONCLUSION

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



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of March, 2020.

STATE OF SOUTH CAROLINA
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Honorable Steven H. John, Circuit Court Judge

THE STATE,

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V.

EDWARD LEE JOSEPH WASHINGTON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edward Lee Joseph Washington 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 Steven H. John, which was held on June 3 - 5, 2019, 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 Edward Lee Joseph Washington.

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of March, 2020.

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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;
- (3) State's Ex. 3 (Guyett's in-car camera);
- (4) State's Ex. 78 (Blood collection report);
- (5) State's Ex. 82 (Affidavit for failure to produce video of DUI);
- (6) State's Ex. 88 (Guyett's body-worn camera);
- (7) State's Ex. 91 (Jordan's body-worn camera).

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

March 4, 2020



Adam Sinclair Ruffin
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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."

March 4, 2020.



Adam Sinclair Ruffin
Appellate Defender

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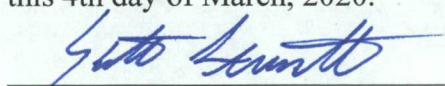
APPELLANT

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 William M. Blicht, Jr., 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 Edward Lee Joseph Washington, 311014, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of March, 2020.


Adam Sinclair Ruffin
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of March, 2020.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.

