

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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May 27 2020

Appeal from Charleston County

SC Court of Appeals

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BERNARD EMMANUEL JACKSON,

APPELLANT

APPELLATE CASE NO 2019-001412

ANDERS BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
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Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in failing to suppress video footage of Appellant's interaction with law enforcement where the footage included Appellant making statements about his unusual political beliefs and therefore, the probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues under Rule 403, SCRE?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County grand jury for failure to stop for a blue light, unlawful carrying of a pistol, child endangerment, and resisting arrest. R. 215-222. Appellant's trial was held before the Honorable Bentley D. Price and a jury from August 14 – 15, 2019. R. 1. Appellant was represented by Stephen Bowden and Teresa Norris. R. 1. The state was represented by Lemuel Zeigler and John Sowards. R. 1.

The jury found Appellant guilty as charged on all four counts. R. 197, ll. 9 – 21. The judge sentenced Appellant to three-years imprisonment for the failure to stop for a blue light and one-year imprisonment for each of the remaining charges; all sentences to run concurrently. R. 213, ll. 2 – 13.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

STATEMENT OF FACTS

On September 18, 2015, Appellant was pulled over by Brandon Wade of the Charleston County Sheriff's Office for speeding. R. 63, l. 22 – 65, l. 21. Appellant refused to provide Wade his identification, so Wade requested another officer to assist. R. 66, l. 8 – 67, l. 6. Wade was able to determine that the vehicle was registered to Appellant. R. 68, ll. 7 – 17. Because Appellant refused to identify himself or roll his window down to speak with Wade, Wade told Appellant that he was going to break Appellant's window. R. 69, ll. 4 – 19.

After Wade told Appellant that he was going to break the car window, Appellant drove away. R. 125, ll. 18 – 23. The officers chased Appellant for approximately twelve miles until they were able to bring his vehicle to a stop by deploying their "stop sticks." R. 126, ll. 6 – 12. Appellant got out of the vehicle and laid on the ground at which time he was placed under arrest. R. 76, ll. 13 – 22. Wade was then able to determine Appellant's identity through a driver's license found inside the car. R. 77, ll. 1 – 7. Two children, ages sixteen and twelve, were discovered in the backseat of the car and a pistol was found underneath the driver's seat. R. 89, ll. 4 – 6; R. 115, ll. 21 – 25.

ARGUMENT

The trial judge erred in failing to suppress video footage of Appellant's interaction with law enforcement because the footage included Appellant making statements about his unusual political beliefs and therefore, the probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues under Rule 403, SCRE.

Relevant Facts

Defense counsel made a pretrial motion to suppress portions of the video footage which showed Appellant's interaction with law enforcement after he was initially stopped. R. 22, ll. 11 – 18. Counsel pointed out that the video footage showed Appellant making unusual arguments to the officer about why he was not required to provide his identification and these arguments would confuse the jury and lead them to base their decision on something other than the relevant evidence. Counsel further argued that the beliefs espoused by Appellant would be unfamiliar and shocking to anyone who did not work in the court system. R. 22, l. 19 – 23, l. 4. Counsel argued that any probative value of those portions of the video were substantially outweighed “by the prejudice created by . . . the strangeness of the beliefs.” R. 23, ll. 5 – 9.

The assistant solicitor argued that the footage of Appellant arguing with the officer about whether he was required to provide the officer his identification was relevant because it provided context to why the officer threatened to break Appellant's car window. R. 23, l. 12 – 24, l. 3. The judge ruled that the video showing Appellant arguing with the officer was relevant to the resisting arrest charge and denied defense counsel's motion to suppress. R. 25, ll. 2 – 24.

The state introduced officer Wade's dash cam video as State's Exhibit 1-B over defense counsel's renewed objection. R. 73, ll. 13 – 21; R. 83, l. 9 – 85, l. 13. The dash camera video was then published to the jury in its entirety. R. 85, l. 18 – 86, l. 6; State's Ex. 1-B (Dash camera

footage of traffic stop on file with this Court). The state also introduced officer Wade's body camera video as State's Exhibit 3 over defense counsel's renewed objection. R. 123, ll. 11 – 20; State's Ex. 3 (Body camera footage of traffic stop on file with this Court).

Discussion

Under Rule 403 of the South Carolina Rules of Evidence, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013).

The trial judge erred in allowing the state to introduce video footage of Appellant arguing with law enforcement officers during the traffic stop. Appellant's given reason for refusing to comply with the officer's demand that he produce a driver's license was that he was not “driving” but rather “traveling.” This is a relatively common belief held by “sovereign citizens” but a typical juror is unlikely to know this. See Caesar Kalinowski IV, A Legal Response to the Sovereign Citizen Movement, 80 Mont. L. Rev. 153, 167-168 (2019) (noting that the most common claim by sovereign citizens that local police encounter is the claim that individuals have a right to travel freely without permission from the government and that “the right to travel constitutes a complete bar on government interference with travel in the absence of probable cause or evidence that a victim has been harmed”). As defense counsel argued, to anyone who works outside of the criminal justice system and is unfamiliar with the beliefs of “sovereign citizens,” the statement that a person does not need a driver's license to operate a motor vehicle on the roadway in South Carolina because they are “traveling” and not “driving” is likely to be perceived as shocking and highly unusual.

The statements made by Appellant represented a political belief system that were ultimately irrelevant to the crimes he was accused of committing. Those beliefs had nothing to do with why Appellant fled the scene and were improper for the jury to consider. Furthermore, the jury was likely to be confused about the relevant issues when hearing Appellant's comments about probable cause to arrest and the officer not being able to name a victim for the crime of speeding for which Appellant was initially stopped. See State's Ex. 1-B at 3:00.

In Vasquez v. State, 388 S.C. 447, 464-465, 698 S.E.2d 561, 570 (2010), this Court held that trial counsel was ineffective in failing to object to the solicitor's closing argument in which he described the defendant, a Muslim, as a domestic terrorist and referenced the terrorist attacks against the United States on September 11, 2001. This Court found that "the solicitor's statements improperly evoked religious prejudice and, thus, served only to inflame the passions and prejudice of the jury." Id. at 460, 698 S.E.2d at 567. Furthermore, the Fourth Circuit recently found that the government's use of an ethnic stereotype against an alleged drug trafficker, who happened to be Hispanic, was constitutionally improper. United States v. Garcia-Lagunas, 835 F.3d 479, 488 (4th Cir. 2016).

Here, it was improper for the state to introduce evidence that suggested the defendant was guilty because of his unusual political beliefs instead of the relevant evidence. The trial judge erred because Appellant's unusual political beliefs had no probative value for the crimes he was charged with and carried an extreme danger of unfair prejudice and confusion of the issues. Vasquez, supra. The interjection of Appellant's political beliefs into the jury's consideration permitted it to make a decision on an improper basis. Appellant's convictions should be reversed.

CONCLUSION

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

s/Adam Ruffin
Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of May, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bernard Emmanuel Jackson 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 Bentley Price, which was held on August 14 - 15, 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 Bernard Emmanuel Jackson.

Respectfully Submitted,

s/Adam Ruffin

Adam Sinclair Ruffin

Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of May, 2020.

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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 indictment(s);
- (2) Entire trial transcript;
- (3) State's Ex. 1-B (Dash camera footage of traffic stop);
- (4) State's Ex. 3 (Body camera footage of traffic stop).

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

May 26, 2020

s/Adam Ruffin

Adam Sinclair Ruffin
Appellate Defender

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(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.”

May 26, 2020.

s/Adam Ruffin

Adam Sinclair Ruffin
Appellate Defender

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