

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED

Jul 27 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES LAMAR FICKLIN,

APPELLANT

APPELLATE CASE NO 2019-001741

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in overruling counsel's objection to the arresting officer's testimony that his decision to arrest appellant was based on his conclusion that appellant was the aggressor in the case because this fact finding was the duty of the jurors at trial.

STATEMENT OF THE CASE

Appellant James Lamar Ficklin was indicted on the offense of first degree assault and battery, but convicted of third degree assault and battery per jury trial held during the October 2019 term of the Greenwood County General Sessions Court before Judge Eugene C. Griffith, Junior. Appellant was sentenced to payment of a \$300 fine. Elizabeth Able and Tristan Shaffer represented appellant at trial and Assistant Solicitors Carson Penny and Josh Thomas appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, supra.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Fripp, 396 S.C. 434, 721 S.E.2d 465 (Ct. App. 2012) (quoting State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006)). Rule 701 SCRE explains when a lay witness testimony is admissible, i.e. if the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) are rationally based on the perception of the witness (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact or issue and (c) do not require special knowledge, skill, experience or training.

ARGUMENT

The trial judge erred in overruling counsel's objection to the arresting officer's testimony that his decision to arrest appellant was based on his conclusion that appellant was the aggressor in the case because this fact finding was the duty of the jurors at trial.

This case arose from a confrontation between Jacob James and appellant at a gas station. Jacob James testified that on October 10, 2018, he had just pumped gas into his car at the Stop-A-Minut in Ware Shoals when a car pulled up behind him. James stated that the driver of the car was appellant and that after appellant stopped his (appellant's) vehicle and blew the horn, he (appellant) then bumped into his (James') vehicle. James testified that he could not move his car forward because another car was parked in front of his car. James stated that when he questioned appellant and asked about insurance, appellant responded by pulling out a knife and using threatening words. R. 41, 1.7 – p. 48, 1.19.

Police Officer Bryan Louis was dispatched to the crime scene and testified that he talked to witnesses at the scene, and to James and appellant, and then collected evidence (knife). Officer Louis added that according to his view, “[appellant] was identified as the aggressor [and appellant] was placed under arrest.” R. 74, 1.2-p. 80, 1.25.

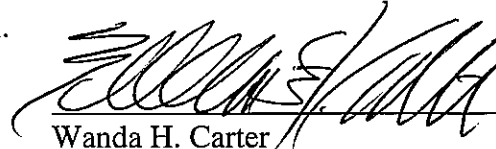
Defense counsel objected to the officer testifying in reference to the ultimate issue of fact that only the jury could and had been charged to decide in the case. The trial judge overruled the objection. R. 81, 1.5-p. 83, 1.9. The trial judge also denied appellant counsel's request for a curative instruction to the effect that “the jury should not take the fact the police found [appellant] to be the aggressor to weigh in any way related to guilt or innocence of the client.” R. 82, lines 7-21.

Per S.C. Code Ann. Section 16-3-600 (E), third degree assault and battery occurs when a person unlawfully injures another or offers or attempts to injure another person with the present ability to do so. Note that appellant claimed self-defense, which in effect meant that appellant viewed James as the aggressor because self-defense required him (appellant) to be without fault in bringing on the difficulty. This was why the police officer's comment and decision that appellant was the aggressor was error because the identity of the aggressor was a question of fact for the jury in the case. All questions of fact are to be decided by the jury. State v. Norris, 270 S.C., 552, 243 S.E.2d 440 (1978); State v. Smith, 227 S.C. 400, 88 S.E.2d 345 (1955). Also, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and that he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). The state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012).

The trial judge erred in overruling defense counsel's objection to the officer's testimony regarding the ultimate jury question in the case, i.e., the identity of the aggressor in the case, as this concerned also the question regarding appellant's self-defense claim, all of which violated appellant's rights under the Sixth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that this case be reversed and remanded to the lower court for a new trial.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Lamar Ficklin states that:

1. She is Deputy Chief 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 Eugene C. Griffith, which was held on October 2, 2019, 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 James Lamar Ficklin.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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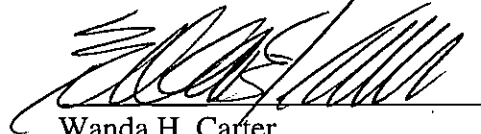
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

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

- (1) True-billed indictment;
- (2) Entire Transcript

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

July 27, 2020



Wanda H. Carter
Deputy Chief Appellate Defender

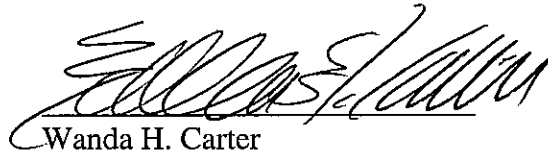
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CERTIFICATE OF COUNSEL

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."

July 27, 2020.



Wanda H. Carter
Deputy Chief Appellate Defender

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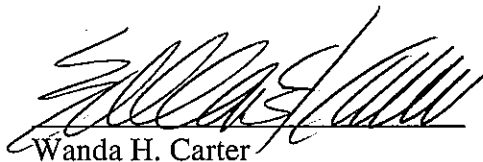
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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Record on Appeal in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) and a copy of the Anders Brief of Appellant and Record on Appeal have been served on James Lamar Ficklin, at 709 Keisler Drive, Greenwood, SC 29646, this 27th day of July, 2020.



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT