

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 01 2013

Appeal from Florence County

SC Court of Appeals

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TODDRIQUE D. HENDERSON,

APPELLANT

Appellate Case No. 2013-000256

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in allowing the jury to hear prior bad acts testimony indicating that appellant was in possession of marijuana during the incident in question due to its prejudicial effect because appellant was being tried on a cocaine offense charged against him.

STATEMENT OF THE CASE

Appellant Toddrique D. Henderson was convicted of trafficking in crack cocaine during the January 2013 term of the Florence County General Sessions Court before Judge Michael G. Nettles. Appellant was sentenced to imprisonment for a period of seven years. Karen Parrott represented appellant at trial.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial court erred in allowing the jury to hear prior bad acts testimony indicating that appellant was in possession of marijuana during the incident in question due to its prejudicial effect because appellant was being tried on a cocaine offense charged against him.

At trial, Officer Timothy Keefe testified that he and Officer Angel Clark were patrolling the Lucas Street area of Florence County on February 14, 2012, when he observed someone driving a vehicle (Buick) with windows that violated the tint rules (greater than 27% opaque) and went on to conduct a traffic stop. Officer Keefe explained that when the Buick vehicle stopped, two males (driver and a passenger) exited from the vehicle and fled on foot. Officer Keefe stated that one of the males, who was later identified as appellant, ran toward a fence in the area and threw an object out of his pocket. According to Officer Keefe, appellant was apprehended and arrested at the scene. App. 45, l. 3-p. 61, l. 10. Crack cocaine (17.84 grams) was identified (and weighed) as the substance thrown down at the scene. Tr. 41, lines 1-9; Tr. 91, lines 17 – p. 92, l.1.

Officer Keefe added that he saw a third individual (Travis Black) who was located in the back seat of the Buick vehicle. Tr. 55 l. 1258-p.56, l. 21. Officer Clark, who patrolled with Officer Keefe on the day in question and witnessed this event, testified at trial about the case as follows:

Defense Counsel: And did you find anything in the car?

Officer Clark: We located marijuana in the back seat of the car, a small bag of marijuana. Tr. 91, lines 11-13.

Solicitor: In terms of marijuana you found in the back seat...you charged Travis Black with that...isn't that correct?

Officer Clark: Correct.

Solicitor: And he accepted responsibility for that marijuana?

Officer Clark: Yes, sir. Tr. 93; lines 9-15.

In the case at bar, the marijuana testimony qualified as prior bad acts evidence, which was prejudicial as well because this marijuana was certainly linked to and associated with appellant

since it was found in the same vehicle appellant was in when the police conducted the traffic stop in the case. Even though Travis Black was charged on a marijuana offense as a result of this; nonetheless, the jurors probably believed that appellant knew about the marijuana and probably had some connection to the marijuana (constructive or actual possession). In other words, it was more likely than not that the jurors surmised that appellant was somehow associated with the marijuana found in the back seat of this vehicle.

Evidence of prior bad acts is inadmissible to show that the accused is a bad person or has the propensity to commit the crime charged. State v. Peake, 302 S.C. 378, 396 S.E. 2nd 362 (1990). Clearly, the prior crimes testimony presented in this case portrayed appellant as one who has dealt in drugs (crack cocaine and marijuana) and that as a result, he was probably guilty of the cocaine offense for which he was on trial. Admitting similar priors (drug related in nature) to the crime for which defendant is on trial would constitute evidence that is more prejudicial than probative because it heightens the unfavorable the inference that the defendant had the propensity to commit the crimes charged against him. State v. Smith, 309 S.C. 409, 419 S.E 2d 816 (1992); State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

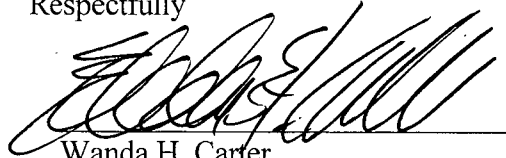
Note also that appellant did not testify and did not present any witnesses at trial. A defendant's character cannot be attached unless the defendant first places his character in issue. Mitchell v. State, 298 S.C. 186, 379 S.E. 2nd 123 (1989).

Allowing the jury to hear the prior bad acts testimony in question in this case violated appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution.

CONCLUSION

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

Respectfully

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 1st day of July, 2013.

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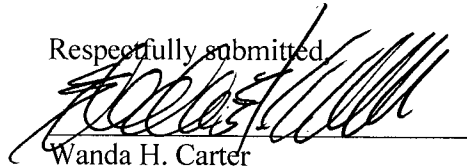
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Toddrique D. Henderson states:

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 Michael G. Nettles, which was held on January 17, 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 Toddrique D. Henderson.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of July, 2013.

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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

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

July 1, 2013


Wanda H. Carter
Deputy Chief Appellate Defender

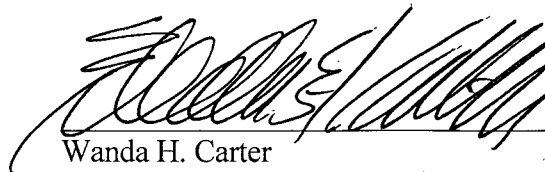
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 1, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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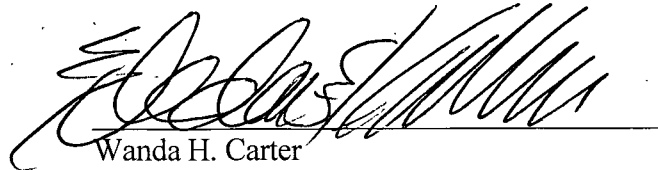
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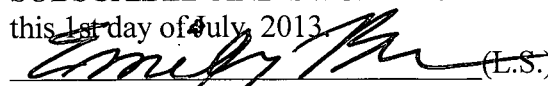
CERTIFICATE OF SERVICE

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 Salley W. Elliott, 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 Toddrique D. Henderson, #329158 at Kirkland Correctional Institution, this 1st day of July, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of July, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.