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Oct 05 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS S. TURNER,

APPELLANT

APPELLATE CASE NO. 2023-000116

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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

Did the trial court abuse its discretion in admitting the narcotics taken from Appellant where the State failed to establish a sufficient chain of custody?

STATEMENT OF THE CASE

During the November 2022 term of the Abbeville County grand jury Appellant was indicted for one count of trafficking methamphetamine, ten to twenty-eight grams, and resisting arrest. R. 270-271; 247-275. On January 18-19, 2023, the State, represented by Micah Black and Yates Brown called the case to trial before the Honorable R. Scott Sprouse and a jury. Appellant was represented by Jane Merrill and Don Colongeli. R. 1. Appellant was convicted as charged. R. 259, ll. 4-14. Judge Sprouse sentenced Appellant to six years imprisonment on the trafficking charge and one year imprisonment on the resisting arrest charge, sentences to run concurrently. R. 267, l. 11-268, l. 3; R. 272-273; 276-277.

Appellant timely filed a notice of appeal on January 19, 2023. This brief 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. 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.

ARGUMENT

The trial court abused its discretion in admitting the narcotics taken from Appellant where the State failed to establish a sufficient chain of custody.

Relevant Facts

On January 2, 2022, Jamaya Jones called police to assist her in removing the Appellant, Douglas Turner, from her apartment. The couple had been arguing and Jones became scared. She requested that Appellant leave the apartment and be placed on a trespass notice. R. 39, l. 6 – R. 40, l. 19. Officers were dispatched to the scene of a domestic disturbance with an unknown weapon¹ involved. R. 46, ll. 5-6; R. 78, ll-17-21; R. 119, ll. 3-6. When officers arrived on scene, they noted that Appellant was sweating profusely, acting erratically, and not making very much sense. R. 48, l. 24-R. 49, l. 4; R. 80, l. 22-R. 81, l. 17; R. 121, ll. 7-14.

Officers placed Appellant in investigative detention while they determined what had occurred. Jones stated Appellant was intoxicated, causing a disturbance, and scaring their kids. She did not want him charged with anything but wanted him to leave the residence and not come back. R. 87, ll. 19-25; R. 51, ll. 11-19. Due to Appellant's behavior officers requested EMS respond to the scene, however Appellant refused treatment. R. 56, l. 17-R. 57, l. 8. Officers explained to Appellant that he was being placed on trespass notice from the apartment and that he had to leave that evening once he was released. When Appellant stated he would not leave the apartment the officers arrested him for trespass after notice. R. 57, ll. 9-25; R. 88, ll. 8-20; R. 89, ll. 1-5.

When officers attempted to place Appellant into a patrol vehicle, he locked up his body and would not comply with commands. R. 62, ll. 18-24. During the struggle Officer Aaron

¹ It was ultimately determined that Jones had retrieved a handgun at some point during the argument but had put the handgun away by the time police arrived. R. 78, l. 24-R. 79, l. 2

Crowe felt what he believed to be contraband. R. 90, l. 5- R. 91, l. 20. Officers placed Appellant on the ground to perform a search incident to arrest. R. 91, l. 25-R. 92, l. 4. Officer Kiefer Smith was able to remove a plastic baggie containing multicolored pills from Appellant's pocket. Smith handed the narcotics to Crowe who placed them in the passenger seat of his patrol vehicle. R. 95, l. 6-R. 97, l. 20; R. 133, l. 15-R. 134, l. 3.

Due to his erratic behavior and resistance to being placed in a patrol vehicle, Appellant was strapped to a gurney and transported to the hospital prior to being taken to the detention center. R. 64, l. 4-R. 65, l. 9. Crowe rode in the ambulance with Appellant to the hospital and testified he left his patrol vehicle at the initial scene. R. 103, ll. 9-13; R. 135, ll. 20-23. Smith testified that he could not recall how he had gotten to the hospital, but that Crowe had offered to let him drive his patrol vehicle since Smith had lost his keys during the struggle with Appellant. R. 134, ll. 21-24; R. 147, l. 10 – R. 148, l. 3. Officers were dispatched to the scene at approximately 6:30 p.m. the evening of the incident. R. 45, ll. 16-20. Officer Smith logged the baggie of pills into evidence at 12:50 p.m. on January 3, 2022. R. 149, l. 21-R. 150, l. 6.

Discussion

“A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable.” State v. Taylor, 360 S.C. 18, 22–23, 598 S.E.2d 735, 737 (Ct. App. 2004) (internal citations omitted). “Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable.” Id. (internal citations omitted).

A complete chain of evidence, tracing possession from the evidence's initial control to its final analysis, must be established as far as practicable. State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). A missing link in a chain of custody creates an issue of admissibility. Id. “In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [evidence] was not established at least as far as practicable.” State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (internal citations omitted). “On the other hand, where the identity of persons handling the specimen is established, we have found evidence regarding its care goes only to the weight of the specimen as credible evidence.” Id. (internal citations omitted). “In other words, where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility.” Id. (internal citations omitted).

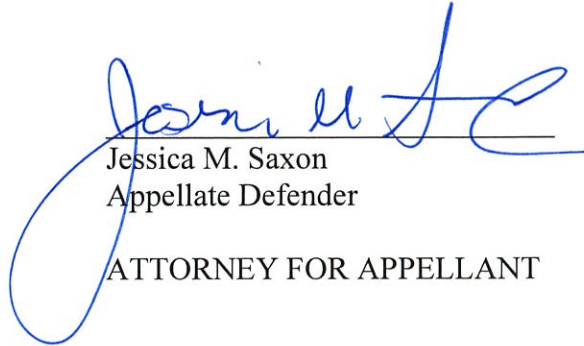
As Counsel Merrill argued at trial, it was unknown where the narcotics were from the time they were placed into Crowe’s vehicle until they were returned to Smith for testing and documentation. The testimony of the officers was that the pills were sitting in the front seat of Crowe’s car, but they were not certain where Crowe’s car was. Crowe testified he left it at the initial scene. Smith testified he may have driven Crowe’s vehicle, and the pills, to the hospital. There were at least four hours where the location of the pills was unknown which leaves to speculation and conjecture who handled them and what was done with them.

The trial court found that the State had established a sufficient chain of custody and that the argument Counsel Merrill made went to the weight of the evidence, not its admissibility. This ruling overlooked that there were numerous hours where the pills were unaccounted for after their initial seizure. The State argued that the pills were secured in the front seat of Crowe’s vehicle and that it was locked. However, Smith had the keys to Crowe’s vehicle and

possibly drove it to a new location where it could have been left unlocked, with the pills sitting in the front seat in plain view to anyone passing by. From the point of seizure until almost 1 a.m. the following morning the pills were not properly stored, it was unclear who had access to them, and where they were located. This was a break in the chain of custody, not just a weak link, and required suppression of the pills.

CONCLUSION

Based on the foregoing argument Appellant respectfully requests that this Court find the pills should have been suppressed and reverse his conviction and sentence for trafficking methamphetamine.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 5th day of October, 2023.

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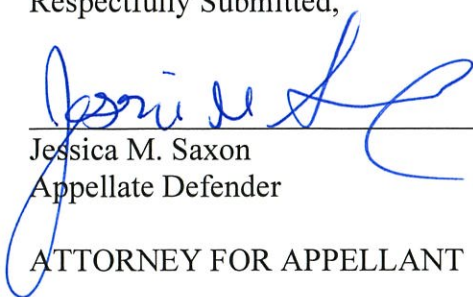
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Douglas S. Turner 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 R. Scott Sprouse, which was held on January 18-19, 2023, 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 Douglas S. Turner.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of October, 2023.

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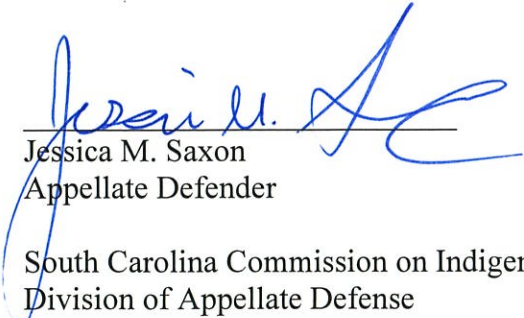
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s): 2022GS01-0683; 2022GS01-0185
- (2) Trial Transcript dated January 18-19, 2023

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



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This 5th day of October, 2023.

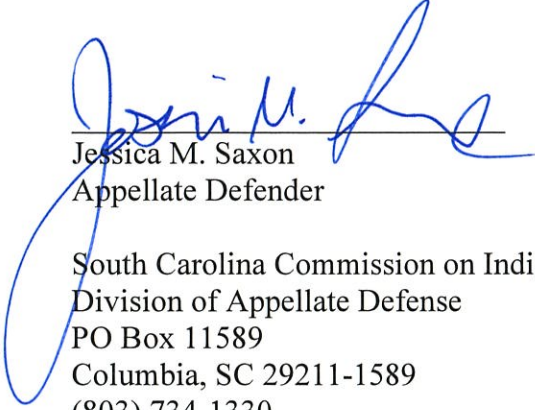
CERTIFICATE OF COUNSEL

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."

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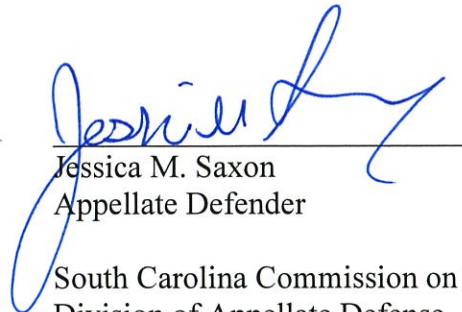
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APPELLATE CASE NO. 2023-000116

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Douglas S. Turner, #295185, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067, this 5th day of October, 2023.



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