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**May 29 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Charleston County

Honorable Perry H. Gravely, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

EMANUEL WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2023-001804

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ANDERS BRIEF OF APPELLANT

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WANDA H. CARTER  
Deputy Chief 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**

The lower court erred in allowing a police officer to testify that the white powder found on appellant pursuant to a search of him was cocaine because no prior foundation had been laid previously at trial in order to properly identify the same.

## **STATEMENT OF THE CASE**

Appellant Emanuel Williams was convicted of trafficking in cocaine (10 grams or more or less than 28 grams) per jury trial held during the November 2023 term of Charleston County General Sessions Court before Judge Perry H. Gravely, who sentenced petitioner to imprisonment for a period of twenty-five years. Assistant Solicitors Nina L. Savas and John Ryan Mullen prosecuted the case, and Attorneys Helen Roper Dovell and Claire Schulmeister represented appellant at trial.

Appellant appealed his conviction and sentence. 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, 631 S.E.2d 262 (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. State v. Pagan, *supra*.

## ARGUMENT

The lower court erred in allowing a police officer to testify that the white powder found on appellant pursuant to a search of him was cocaine because no prior foundation had been laid previously at trial in order to properly identify the same.

At trial, Officer Desiree Schnachenberg testified that she was the on-call investigator at the scene when appellant was arrested on November 10, 2020. Note that Officer Schnachenberg had been in charge of an investigation into a robbery that occurred on the previous evening at Vickery Lounge where appellant was deemed a suspect according to eyewitnesses who were present there. On the date in question, Officer Schnachenberg and numerous additional officers arrived at the residence where appellant was known to have been living and arrested him. R. 73, l. 1 – p. 92, l. 15. White powder was found on appellant pursuant to a cursory search of him at the time of his arrest. R. 129, l. 14 – p. 130, l. 18; R. 284, l.10-13; R. 289, l.1-10; The white powder was placed in a BEST KIT for analysis. R. 289, l.14-20.

Eleven officers testified at trial regarding the discovery of the white powder at issue, which was identified subsequently as cocaine by the state’s chemist who analyzed the same and testified to that effect at trial. Thereafter, the drug was admitted into evidence as state’s exhibit number seven. R. 383, l.10-p. 385, l.15. However, an error occurred when the **first** officer who testified at trial answered questions regarding the white powder in question, and how the white powder was discovered per a search of appellant. The colloquy follows:

Solicitor: And what is this?

Schnackenberg: It’s a screen shot from my body cam.

Solicitor: And was this the search just now that we watched?

Schnackenberg: Yes.

Solicitor: And who is this?

Schnackenberg: Mount Pleasant Officer Harper.

Solicitor: And then who is this?

Schnackenberg: North Charleston Narcotics Detective Kincinski.

Solicitor: And who is this?

Schnackenberg: [Appellant].

Solicitor: And what is this?

Schnackenberg: The bag of cocaine.

Defense Counsel: Objection your Honor. They haven't laid a foundation for that yet.

Court: Sustained.

Defense Counsel: Your Honor, will you please strike that as well.

Court: Alright. I'll ask that it be stricken at this point. There's been no test done so I'm going to grant the motion and ask that it be stricken and you're not to consider that testimony in your deliberations. R. 268, 1.5-p. 269, 1.3.

No foundation was laid in this case previously establishing that the white powder in question was in fact cocaine before this conclusory testimony was presented to the jury by the **first** officer who testified at trial and identified the same as cocaine. Black's Law Dictionary (10<sup>th</sup> Ed. 2014) defines laying a foundation as introducing evidence of certain facts as needed to render later evidence relevant, material, or competent." See also State v. Mealor, 425 S.C. 625 825 S.E.2d 53 (S.C. Ct. App. 2019); and State v. Hotowski, 427 S.C. 119, 828 S.E.2d 605 (2019). Foundation is simply a loose term for preliminary questions designed to establish that evidence is admissible. Mealor, supra citing to A.I. Credit Corp v. Legion Ins. Co., 265-F. 3d 630 (7<sup>th</sup> Cir. 2001). See also City of Columbia v. Wilson, 324 S.C. 459, 478 S.E.2d 88 (1996),

where the Court held that the prosecution was required to lay a foundation for alcohol breath tests in a DUI prosecution. In the instant case, the **first** officer who testified at trial gave a conclusory statement identifying the white powder found on appellant as cocaine despite the fact that no evidence was previously presented on the subject before the chemist, who analyzed the white powder and found that the same was cocaine, testified at trial. It was error to prematurely present to the jury as an evidentiary matter testimony that the white powder was cocaine before previously laying a foundation at trial to establish proof that this was true.

Here, proof of the *corpus delicti* of the crime charged was the actual white powder confiscated from appellant, which was the heart or crux of the state's case in support of the charge on trafficking in cocaine filed against appellant. The state bore the burden of proving guilt; and therefore, the premature revelation to the jury that the white powder confiscated was cocaine before laying a foundation on the identity of the white powder constituted prejudicial error. Compare the cocaine trafficking case of State v. Wren, 322 S.C. 103, 470 S.E.2d 111 (1996), where the case was reopened to allow the state to present the actual cocaine (drug) as part of the state's case because without doing so there was no *corpus delicti* of the crime to provide evidentiary support on that drug offense charged against the defendant.

The lower court erred in allowing testimony identifying the white powder found on appellant per a search of him at the time of his arrest as cocaine before a proper foundation was previously laid to justify such an assertion in the case.

**CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that this Court reverse appellant's conviction and remand the case to the lower court for a new trial.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of May, 2024.

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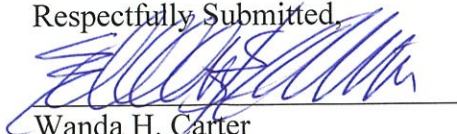
PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Emanuel Williams states:

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 Perry H. Gravely, which was held on Nov. 6-9, 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 Emanuel Williams.

Respectfully Submitted,

  
\_\_\_\_\_

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of May, 2024.

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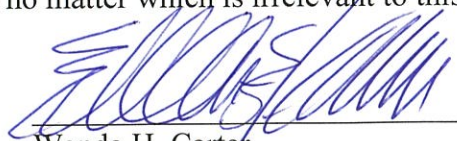
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript
- (2) Indictment

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



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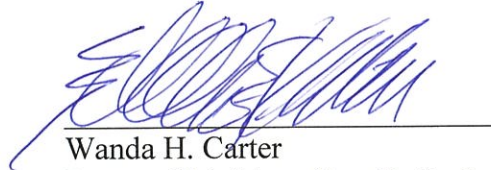
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**CERTIFICATE OF COUNSEL**

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.”



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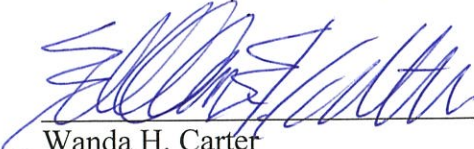
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CERTIFICATE OF SERVICE

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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 Emanuel Williams, #392533, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 29th day of May, 2024.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT