STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The State, Respondent,

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SC Court of Appeals

Vs.

Marlo Jackson, Appellant

Appeal from Kershaw County
Paul M. Burch, Presinding Judge

Pro-Se Appellant Brief

Mr. Marlo Jackson
Kershaw Correctional Inst.
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STATEMENTS OF THE CASE

On or about April 10, 2024, the State filed a Sixty-Seven page Indictment in the County of Kershaw, alleging approximately "eighty-two criminal counts", against approximately fifty-one named co-defendants, as well as several redacted names. Charging "Conspiracy" to traffic various controlled substances throughout various counties, within South Carolina.

Out of the approximately eighty-two counts, of a Third Superseding indictment (Case No. 2022-GS-47-07), Appellant was only named in the following listed Counts: See Tr. tr. p. 7.

a). Count One, Trafficking Meth, 400 grams or more; Conspiracy.
b). Count Two: Trafficking Cocaine, 400 grams or more; Conspiracy.
c). Count Three; Trafficking Cocaine Base, 28 grams or more but less than 100 grams; Conspiracy.
d). Count Four; Conspiracy to distribute fentanyl "no drug weight".
e0. Count Five; Trafficking Heroin, 28 grams or more; Conspiracy.

Trial of the case began March 24, 2025 and lasted until March 27, 2025. Appellant selected a "bench rather than jury trial". And The Honorable Paul M. Burch, presided over the trial. Appellant was represented by Ben Stitely, and the State was represented by Savanna Goude, of the South Carolina Attorney General's Office.

During the state's introdoction of its evidence, it put forth the most confusing mix-matched case of an alleged conspiracy, allegedly involving Appellant, in which no credible co-conspirators existed. Counsel for the Appellant, Mr. Stitely, objected and preserved 'throughout the entire trial', "what is the relevance of suspected testimony of (1) Courtney Burris", (2), Tr. tr. p. 53-58, who would not testify in fear of 'self-incrimination!

Next, on Tr. tr. p. 59, the State introduced Lieutenant Edmoson, Douglas, from SLED. And called his memory back to October 20, 2021. Lt. Edmonson, testified he employed a CSI known as "Coon", to began conversation with Appellant, and subsequently arranged a drug deal. Tr.tr. p. 61, lines 18-25.

On October 20, 2021, Lt. Edmonson stated the CSI purchased the drugs from Appellant, which was 'cocaine'. Tr.tr.p. 64, lines 18-25. Additionally, Lt. Edmonson testified "he purchased heroin from Appellant", on this same October 20, 2021 date. Tr.tr. p. 65 lines 1-4.

Lt. Edmonson's attention was then called to December 2, 2021, again, "to the area of Egypt Road in Lee County". Where he testified he purchased heroin from Appellant. Tr.tr.p. 81, lines 1-25.

On cross examination, defense counsel pointed out "both of these 'buys' occurred in Lee County? Tr.tr.p. 86, lines 16-25. Lt. Edmonson answered in the affirmative. The physical drugs from the above purchases "were unavailable" to place ANY AMOUNT ON THEM. Tr. tr. p. 87, lines 1-12.

Next, the State called Chris Johnson, another Lieutenant from the State Law Enforcement Division (SLED), that worked in surveillance. Tr. tr. p. 88, lines 16-25. Additionally elicitng testimony that Lt. Johnson was in such position back in 2022.

So, assuming the proper process for abtaining "interception of wire, oral, or electronic communication" was followed pursuant to 18 U.S.C. §2518. Where the trial court on the ending of trial's first day. While recessed, "there was a federal matter" requiring attention, which could only be issues concerning the application for the wire interception. All other inquiries were purely state matters. Tr. tr. p. 210, lines 12-16.

On Tr.tr.p. 96, defense counsel correctly posits his objection to hearsay by Lt. Johnson attemps to identify calls without any basis of what the call is about, creating Confrontaion Clause problems". Tr.tr. p. 96, lines 16-25; p. 97, lines 1-25; p. 98, lines 1-22.

As a result of defense counsel's objection and cross-examination (Tr. tr. p. 100, lines 2-25; p. 101, lines 1-6). The Court called a meeting with "counsel back in chambers" at 12:35. Tr.tr. p. 16-20 (page 101).

Next the State calls Investigator John Carter, from the Kershaw County Sheriff's Office. Trtr.p. 102, lines 5-25. The state elicite testimony from this officer concerning a incident with Anthony Clarkson on February 11, 2022. Tr.tr.p. 103, lines 1-6.

Also, during the testimony of Investigator John Carter (Tr. tr. p. 103, lines 9-17), defense counsel "objected to concerns with confrontation clause issues", where Mr. Clarkson was unavailable to cross-examine, where the State was eliciting and introducing the February 11, 2022 indicent into the trial as being a potential conspiracy. Yet, this incident provided no proof such was connected with Appellant. Whether such case was buyer-seller relationship, or an overall conspiracy.

Next, the testimony of Billy Earl Bell, took center stage at Appellant's trial. To testify that "he had been shot previously, could not work and that incident (shooting) resulted in his decision to sell drugs". (Tr. tr. p. 167, lines 14-16; 168, lines 1-9) That while he engaged selling drugs, "he purchased his supplies from 'Darius and Darien'". Absolutely "no mention of conspiring to purchase drugs from the Appellant, making this testimony irrelevant in Appellant's trial.

Then on Tr. tr. p. 173, lines 12-25, SLED Agent Lieutenant Jamie Shaw, is called to testify. As soon as qualified, he immediately focuses his attention on Appellant, seeing the State's case suffered from conspiracy connections. On page 175, lines 6-11, Lt. Shaww confirms "police was able to cultivate a confidential informant to conspire and purchase drugs from Appellant". Fortunately here, "police nor C.I. can lawfully form any criminal conspiracy with a suspect". Counsel for Appellant however, and in addition, "objects on the basis of unavailability of this alleged C.I.", in order to cross-examine the otherwise 'hearsay statements being introduced by Lt. Shaw'. (Tr. tr. p. 175, lines 12-23)

From Tr. tr. p. 176-184, Lt. Shaw is exponding on how wiretap operates, and explains there were several calls made between Travis Wade, Jonathan Cole, and Appellant. In addition, Lt. Shaw testifies that "Jonathan Cole is actually identified as Appellant". Tr. tr. p. 185 lines 1-4. However, on Tr. tr. p. 186. lines 1-3; Lt. Shaw's answer under oath explains; "while Travis Wade and Appellant was in conversation on the phone, Mr. Wade would then three-way Mr. Cole into the call". Therefore, the prior statement "describing Appellant "as Mr. Cole" (Tr. tr. p. 185, lines 1-4) is patiently false and misleading, attempting to unfairly prejudice Appellant's fair trial rights.

Appellant can go on and on concerning the implications related to fair trial deficiencies". Which was preserved on record for appellate review. But defense counsel sums it up perfectly during his closing argument and his motion for a directed verdict. See Tr. tr. p. 238, lines 14-19.

> "So motion for directed verdict, and it's a very specific legal argument. The State decided to call five counts of 'conspiracy' to traffic drugs in Kershaw County. It's important becasue they didn't call a distribution case in Lee County. They called a conspiracy case which requires them to form a nexus". By Defense Counsel.

Tr. p. 239, lines 17-28

> They have not proved a single nexus on any other substance as required for this conspiracy to go forward. In this case Judge, they've tried to rely on drugs they've seized from individuals without creating the casual link to my client.

Defense counsel then goes on the attack, outlining the evidence and exhibits (i.e. #33 associated with Mr. Clarkson; the bags of drugs allegedly purchased by Appellant from Mr. Cole (buyer/seller, as opposed to conspiracy); Mr. Burris #29, evidence which he explained "he did his own thing", had nothing to do with Appellant; Then the Davenport #35 evidence in 2023, while Appellant

had already been incarcerated sine 2022). Seems hardly to afford Appellant any semblance of a fair trial. See Tr. tr. pgs 238-244. Within defense counsel's legal positions, one would assume the proper choice would have been to elect a bench trial as opposed to a jury trial. Seeing a judge, rather than jury would be more knowledgeable with intricate details of law. Of which, was worth mentioning within a merits brief on appeal, for obvious "abuse of discretion", in denying the overwhelming majority of defense counsel's legal objections.

OPPOSING APPELLANT COUNSEL'S ANDER"S BRIEF

1. Prior to reaching Appellant's arguable issues pursuant to Anders v. California, Appellant must first challenge whether counsel is ineffective on appeal, and whether a merits brief is required instead of the misrepresentation of the posture of the case on record. See State v. Missouri, 2014-001176 (Ct. App. (2017)

In the case of State v. Missouri, Missouri filed an appeal from his May 20, 2014 conviction for bank robbery out of Pickens, South Carolina. On appeal, the South Carolina Commission on Indigent Defense, assigned Ms. Tiffany Butler from that Office.

Ms. Butler (now last name Holt), filed a non-merits brief under Anders v. California, and this Court admonished the appellant in that case where the lack of proper procedures were being denied the appellant. And as this pro-se Anders supplemental brief will clearly show, there are several meritorious issues to be addressed, "had appellate counsel fully develped the record for effective appellate review".

More specifically, in Anders v. Califfornia, 386 U.S. 738, 87 S. Ct. 1396, (1967). This Court concluded discrimination against indigent defendant on his first appeal, "is a constitutional violation" in and of itself. Beginning with Griffin v. People of State of Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L.Ed2d 891(1956), it held that equal justice was not afforded an indigent appellant where the nature of review 'depends on the money he has', at 19, 76 S. Ct. at 591, and continuing through Douglas v. People of the State of California, 372 U.S. 353, 83 S. Ct. 814, 9 L.Ed2nd 811 (1963). This Court has consistently held "invalid" those procedures 'where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is left to shift for himself".

Indeed, the advice of counsel has long been required whenever a defendant challenges a certification that an appeal is not taken in good faith. See Johnson v. United States, 352 U.S. 565, 77 S. Ct. 550 (!957) ANd such representation must be made in the role of an advocate, Ellis v. United States, 356 U.S. 674, 78 S. Ct. 974 (1958)

In Ellis, supra, after conscientious investigation, if counsel is convinced, that the appeal is frivolous, of course, he may ask to withdraw on that account. If the court is satisfied that counsel has diligently investigated the 'possible grounds for appeal', and agrees with counsel's determination of the case, then leave to withdraw may be allowed and leave to appeal may be denied. At 675, 78 S. Ct. 995.

In Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, the Sixth Amendment's requirement that 'the accused shall enjoy the right to have the assistance of counsel for his defense', was made obligatory on the states by the Fourteenth Amendment.

Here, in the instant case at bar, which so happens to be on appeal, Appellant's initial appeal. Appellate Defender, Ms. Wanda Carter (Chief Appellate Defender), possessed the record of appeal in this case, but 'refused to proceed with the appeal in good faith'. And instead, attempts to certify a non-merit finding in bad faith, clearly violating Appellant's Constitutional right to appeal. While undermining her moral and ethical duties as an advocate for this appeal.

Below, Appellant incorporates his seven claims for appellate review, and remain to request "competent assistance of counsel be appointed", in exchange for Ms. Carter, which has clearly demonstrated he unwillingness to perfect a merits brief according to the issues preserved for review.

Appellant's Ground One for Appeal.

Here, let the record support the question; "Whether there exist sufficient evidence rather than confusion, that established 'subject-matter-jurisdiction' pursuant to S.C. COde of Laws, for compiling a state grand jury as to Appellant's alleged criminal acts?

On or about April 10, 2024, the State filed a Sixty-Seven page Indictment in the County of Kershaw, alleging approximately "Eighty-Two Counts", against approximately "Fifty-One named defendants", as well as redacted names of whomever they may want them to be at a later time.

Out of the eighty-two counts, (Case No. 2022-GS-47-07), Appellant was named in only five (5) counts. Count One "Trafficking Meth, 400 grams or more, Conspiracy; Count Two, Trafficking Cocaine, 400 grams or more, cospiracy; Count Three, Trafficking Cocaine Base, 28 grams or more but less than 100 grams, conspiracy; Count Four, Conspiracy to distribute fentanyl "no drug weight"; Count Five, Traf-

ficking heroin, 28 grams or more, conspiracy.

Here, had counsel on appeal combed through the transcript and investigated the facts and marshaled the necessary legal arguments as advocate for the indigent appellant. There would be and are meritorious issues that should have been raised on appeal. Primarily because "the threshold durg amont" required to sustain Count One's 400 gram or more, is totally lacking of any evidentiary support, whther by testimonial or tangible introduced exhibits.

Appellant calls this Court's close attention beyond the smoke and mirrors, that the initial contact with Appellant by the C.I. and Lt. Edmonson, occurred on or about October 20, 2021, and December 2, 2021. Appellant was arrested June-July, 2022. During either of these controlled buys was there any allegation of large quantities of methamphetamine being sold from Egypt, in Lee County by the Appellant. See Tr. tr. p. 64, lines 21-25; and 65, lines 1-4.

Instead, Lt. Edmonds detailed, "the C.I. bought cocaine, and he purchased heroin. No specific drug amount was testified to." There's actually minimal incidents attributable to Appellant after December 2, 2021, but irrelevant incidents involving others. (i.e. see testimony of C. Burris)

Thus, we look between October 20, 2021 and June-July of 2022, to determine whether this Count One's '400 grams' of methamphetamine exist on account of the wording of the superseding indictment. Because if not, the following case-law and argument was preserved for appeal.

The initial State's witness was called , Captain Brad Lawson, detailing incident with Tevin Green. Defesne counsel objected as to relevance. Tr,tr.p. 37-43. This encounter yielded cocaine and suspected heroin.

The next such incident occurred on or about July 16, 2021, involving State's witness Courtneg Burris. The police recovered a small amount of cocaine, meth and a handgun. Nothing from this incident was associated with Appellant. Mr. Burris refused to testfiy based on risk of self-incrimination, since he had pending charges unconnected with Appellant. Tr. tr. p. 53-58.

Although Appellant remained in jail until his trial date under the extreme conditions of Alvin S. Glen's notorious reputation. The State maliciously placed him in a conspiracy to traffic substantial amounts of drugs, "they had no evidence to prove". And Appellant selected a Bench trial, assumming a judge that knows the law, would err on the side of justice and a fair trial.

For argument sake, since Apprendi v. New Jersey, 530 U.S. 466 (2000), "in order to authorize imposition of sentence exceeding the allowable maximum without jury finding 'specific threshold quantity', because 'specific drug threshold quantity' must be treated as "essential elements of aggravating drug trafficking offense", i.e., charged in the indictment, submitted to jury (or judge), and proved beyond a reasonable doubt". See U.S. v. Promise, 255 F.3d 150 (4th Cir. 2001); See also U.S. v. Brooks, 524 F.3d 549 (4th Cir. 2008)(jury, not judge must determine amount of drugs individually attributable to defendant in carrying out conspiracy to establish statutory sentencing minimums and maximums)

Albeit, this case involves a bench trial. The argument stands or fall on the premise of "whether the State proved Appellant trafficked 400 grams or more of methamphetamine, the threshold quantity, and essential 'element of this offense', beyond a reasonable doubt? This is Appellant's initial argument that should have been briefed on appeal, or under "abuse of discretion, when the judge denied the motion for direct verdict, seeing there was an obvious 'lack of sufficient evidence to convict' under specifically Count One.

APPELLANT'S ISSUE TWO FOR APPEAL.

Since the State initiated this case under the theory of 'conspiracy' in order to "increase the required quantity of drugs" to meet the statutory threshold amounts in this case. (i.e. 400 grams or more in Count One; 400 grams or more of cocaine in Count Two; 28 grams or more but less than 100 grams of cocaine base in Count Three; Conspiracy to distribute fentanyl, Count Four; and Trafficking heroin, 28 grams or more of heroin, Count). There does exist serious problems which were preserved by contemporary objections, throughout the trial at large.

As issue one above clearly demonstrated; "the State lacked sufficient evidence of Appellant being liable for 400 grams of methamphetamine". Counting Appellant's buyer/seller participation in this case. It extends from October 20, 2021, until Appellant's July 2022 arrest. There, "any alleged conspiracy would cease to exist by reason of Appellant's incarceration". See U.S. v. Chase, 372 F.2d 453 (4th Cir. 1967)("It is well established that one who acts as a government agent and enters into a purported conspiracy in the secret role of an informer **'cannot'** be a co-conspirator") (citing Sears v. United States, 343 F.2d 139 (5th Cir. 1965)

Appellant has spent substantial time combing through the record in this case and cannot find 400 grams of meth nor cocaine, attributable to him, during the specific time beginning from October 20, 2021 and July 2022. Where in Chase, the Court ruled; "once Chase was arrested, the conspiracy ceased". Since Chase, like Appellant, "couldn't conspire with himself from the confines of a jail cell". The State tried "several unaccounted for individuals, to where defense counsel on several occasions, "objected to relevancy", or for that matter, "who's being tried".

Here, Appellant's counsel on appeal "seen no reason to focus on Appellant receiving 30 years in prison for conspiracy to traffic 400 grams of meth and 400 grams of cocaine, "without the state introducing 400 grams of either drug directly attributable to Appellant Marlo Jackson." Moreover, under the "Pinkerton theory, 328 U.S. 640. Appellant's conviction stand or falls only on the controlled substances attributable to him and their weight. See Pinkerton v. United States, 328 U.S. 640, 66 S. Ct. 1180 (1946).

Once the October 20, 2021, and the December 2, 2021 "agreed purchases" between the government informer and the Agent himself, is lawfully eliminated. It becomes a need for an all-out search "to gain view through the State's smoke and mirrors". In identifying "specific dates, types and amount of drugs:, and exactly who recovered the drugs, from which individuals." From October 2021, up until Appellant's July 2022 arrest, accounts for approximately eight (8) months. With the amount of Counts within the indictment and the amount of defendants, could it be reasonable to conclude Appellant is responsible for "everything, and if so, there would be no reason to prosecute others". Such is why cases founded on the Pinkerton theory only hold a defendant accountable for his actions within a conspiracy. Therefore, the State lacked sufficient tangible, factual evidence to support the verdict "finding Appellant guilty of conspiring to traffic 400 grams of ghost cocaine".

APPELLANT'S ISSUE THREE FOR APPEAL.

Here, Appellant should have been able to include on appeal "Count Three", similar to Counts One and Two, failed to establish "the threshold quantity of 28

grams or more, but less than 100 grams of cocaine. See Tr,tr. p. 231, lines 1-7.

Had counsel for appeal of this case carefully reviewed the record. The record would have revealed the forensic expert's testimnoy when called upon in response to Count Three. Testified "there was a weight amount of only 27.88 grams, not 28 or more". The State on the other hand "had to have known when presenting the case for probable cause to 'state grand jurors'". The infromation being conveyed "was actually false and misleading". Constituting a due process violation and resulting in "malicious prosecution".

A prosecuting attorney violate due process when they knowingly and intentionally enter "false testimony to a grand jury", in order to send a defendant to trial which is actually innocent of the charges. On the above date, with the C.I. purchase from Appellant, and the test results. The State was well appraised the drug quantity was 27.88 grams as to Count Three.

Again, since 2001, the Fourth Circuit had made binding on the States through the Fourteenth and Sixth Amendment governing jury trials. "That threshold quantities of controlled substances, could no longer be just sentencing factors, and instead, "are essential elements of aggravated drug trafficking offenses". See U.s. v. Promise, 255 F.3d 150 (4th Cir. 2001) and U.s. v. Brooks, 524 F.3d 549 (4th Cir. 2008).

Then in Roberts v. State, 420 So.2d 937 (Ct. App. 2025)(State can prosecute only on indictment returned by the grand jury, and the court has no authority to modify or amend the indictment 'in any material aspect') See also United States v. Sadrinia, 134 F.4th 887 (April 16, 2025)(The Fifth Amendment protects a criminal defendant's right to be tried only on an indictment by grand jurors, and a court violates that right when it "broadens the possible bases for conviction from those in the indictment).

Even where as here, Appellant selected a bench trial as opposed to jury. Just as the trial court noticing the error in drug quantity for Count Three, and "broadened the possible bases for which guilt could be found", not so charged in the indictment. This is the classic example of a "constructive amendment of the indictment outside the presence of the grand jury". Which works to "salvage the State's certain loss of conviction on statutory grounds of innocence:.

AS TO APPELLANT'S FOURTH ISSUE.

Next, appeal counsel must have visited defense counsel's many objections on the ground of the defense lack the opportunity to cross-examine. Seeing the State was bent on submitting other crimes of unknown individuals, and their run-ins with the law. As if to "add quantity to the alleged conspiracy involving appellant, these mystery people was not available to cross-examine violating Appellant's right to Confrontation". See U.S.C.A. Amend. V. and VI; XIV.

In brief summation involving the mertorious issues that should have been rased on appeal. To include the denial of the directed verdict defense motion. Just to go and "broadened the possible bases upon which to find guilt". Essentially demonstrate "a need to increase the state's opportunity to win at all cost". In either of these five counts. From October 21, until July 2022. The evidence is totally lacking to sustain a conviction of the Appellant for trafficking conspiracy, involving 400 grams or more, or 28 grams or more. For these reasons, this Court should reject the Anders brief submitted on my behalf, and order a merits

bief in the interest of justice. And grant any all further relief as this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ [signature]

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