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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMIAH BOSTIC,

APPELLANT

APPELLATE CASE NO. 2025-001188

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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¹ R. 184, lines 14-22. R. 185, lines 9-21.

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred and admitted error² during the jury charge after informing the jurors that the bag entered into evidence as an exhibit in fact contained “real crack” because this was a comment on the facts that was so very prejudicial that the same could not have been cured and thus reversible error resulted, which meant that the motion for a mistrial entered by defense counsel regarding this error should have been granted in the case.

² R. 184, lines 14-22. R. 185, lines 9-21.

STATEMENT OF THE CASE

Appellant Jeremiah Rashad Bostic was convicted of trafficking in crack cocaine, possession of a weapon during the commission of a violent crime, and possession of a weapon by a person convicted of certain crimes during the June 2025 term of the York County General Sessions Court before Judge William A. McKinnon. Appellant was sentenced to imprisonment for an aggregate period of twenty-seven years. Attorneys Christopher Lusk and Albert Meyers represented appellant at trial, and Assistant Solicitors Kevin Bayona and Austin Smith prosecuted the case.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion. Clark v. Cantrell, 339 S.C 369, 529 S.E.2d 528 (2000).

ARGUMENT

The trial judge erred and admitted error³ during the jury charge after informing the jurors that the bag entered into evidence as an exhibit in fact contained “real crack” because this was a comment on the facts that was so very prejudicial that the same could not have been cured and thus reversible error resulted, which meant that the motion for a mistrial entered by defense counsel regarding this error should have been granted in the case.

On December 6, 2024, appellant was stopped by York County police on a traffic violation. The search of appellant’s vehicle and person that followed yielded the discovery of a substance alleged to have been crack cocaine. Also, a weapon was found inside the vehicle. Appellant was tried on drug and weapon offenses and thereafter convicted on the charges.

During the jury charge, the trial judge commented on the facts as follows:

THE COURT: You should consider the only evidence that has been presented from the witness stand any exhibits that were made part of the case—the record, and any stipulations of counsel. Actually, let me stop and mention something before...We will send you back the evidence in the case, that includes the drugs. Please do not open the bag of drugs. Okay? If there is some reason that you really absolutely feel you want to see the bag open and we can—I’ll figure out some way, but you—please don’t handle the—its is real crack—I mean, well, okay. Was it stipulated? Okay—okay. I take that back. Okay.

The State has offered—well—well, it—okay. The State has to prove that it’s crack and so please don’t—I haven’t examined the crack; I don’t have any personal knowledge. Please disregard that statement I just said. Okay? But if it is in fact crack, you should not be handling it in the jury room. Okay? Yeah. Yes, Sir?

DEFENSE COUNSEL: We may need to address something real briefly.

THE COURT: Okay. Ladies and Gentlemen, let—let me—let me talk to the lawyers real quick. Let me—I ask you to go out to the jury room. Yeah, I need to—I need to speak to the lawyers briefly.

THE COURT: Yes, sir?

³ R. 184, lines 14-22. R. 185, lines 9-21.

DEFENSE COUNSEL: Your, Honor, at this time, I'm going to move for a mistrial based on the statement that it is real crack. It was not stipulated it was real crack. It's for the jury to determine based on the evidence that was provided; whether or not it is in fact that substance. So we respectfully move for a mistrial, your Honor.

THE COURT: I'm going to deny the motion. I mean, I—I absolutely should not have said that, that was a mistake on my part. However, I immediately corrected it, and I will recorrect it when the jury is brought in. And further, the Defendant did say on video that it was crack. That's my recollection. So—I mean, I—I—I don't think there's any prejudice when the Defendant's on video saying it's crack, but I absolutely apologize.

I should not have said that. I got carried away. I don't—but I—I just don't—I don't want the jury out there seeing—wanting to say, "I want to know what crack feels like," but I will correct it again, but I'm not going to grant a mistrial.

DEFENSE COUNSEL: Understood, your Honor. Just—for the record.

THE COURT: All right. Ladies and gentlemen, I just want to clarify again. I misspoke to you just now, what I meant to say, and what I should have said is, "The State alleges that it is real crack." Okay? Instead I said, what you heard me say.

I want to make sure you understand I am not allowed to have an opinion in this case. I don't have anymore knowledge than you do of what's in those plastic bags. I mean, that is something the State has to prove whether or not that is crack. And I misspoke. I should—what I should have said is, "The State alleges that is real crack, so please don't handle it." Okay? All right. That's my mistake and I apologize.

Ladies and gentlemen, going back to my—my duties. In addition, I'm charging you on the law applicable to this case as the presiding judge. I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any ideas as to what the law is, or what you think it ought to be, and that idea does not agree with me, you must abandon your idea because you are sworn to accept and apply the law exactly as I state it to you. And every case tried in this court before a jury, the jury is the sole and exclusive judge of the facts in the case.

As a trial judge, I can't comment, state, or intimate, or make any statements at all about the facts in the case. Since you the jury are

the sole judge of the facts in this case, you are not to infer from anything I've said in ruling upon the admissibility of evidence, or otherwise, or—or anything I'm now saying that I have any opinion about the facts in this case. The law does not allow me to have any opinion about the facts. And the facts are solely a matter for you the jury to determine. As jurors, it is your duty to determine the effect, the value, the weight, and the truth of the evidence presented during the trial. R. 183, 1.8 - p. 187, 1.3.

Article V, section 21 of the South Carolina State Constitution states that “judges shall not charge juries [with] respect to matter[s] of fact.” A trial judge must refrain from all comments that would tend to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of the accused, or as to controverted facts. State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978). A jury instruction is a comment on the facts when it expresses the trial judge's opinion of a case, thereby imposing the court's belief on the jury in a way that is likely to influence it. State v. Brown, 438 S.C. 146, 881 SE,2d 771 (2022). The petit jury is the exclusive judge of the facts; and therefore, jurors must decide the case sans any opinion by the trial judge. State v. Thorne, 237 S.C. 248, 116 S.E.2d 854 (1960).

Here, the main issue was whether appellant was trafficking in crack cocaine, which meant that the state's burden was to identify and prove that the substance found in appellant's vehicle and/or upon him was indeed crack cocaine. The state's burden was satisfied when the trial judge answered that question of fact as to whether the substance at issue in the case was crack cocaine. As a result, the trial judge proved the state's case by confirming that appellant was trafficking in crack cocaine.

Compare the case of State v. Smith, 288 S.C. 329, 342 S.E.2d 600 (1986), where the Court reversed and held that the comment by the trial judge on a DUI breathalyzer instruction could have been construed by a reasonable juror to indicate that the trial judge believed the state met the burden of proof with regard to presumed admissibility of the alcohol breath test. In Smith, the trial judge stated as follows:

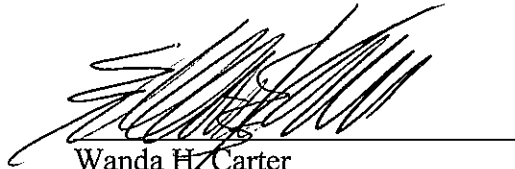
The legislature has also enacted a statute pertaining to a machine known as a breathalyzer machine. *If the State proves* that the machine was in proper working order at the time of the test, that the correct chemicals were used, that the accused was not allowed to put anything in his mouth for 20 minutes prior to the test, and that the test was administered by a qualified person in the proper manner, then the results of the test can be admitted into evidence and [sic] the jury to consider. *You have heard such evidence.* [Emphasis supplied].

The Smith Court held that the trial judge's comments constituted an impermissible comment on the facts.

In the case at bar, the same reversible error occurred at appellant's trial where the trial judge commented on the factual question of whether appellant possessed drugs at the time of the traffic stop and search, which in turn established confirmation and proof for the state that appellant was guilty of trafficking in crack cocaine. This error was reversible error.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's convictions and sentences be reversed and his case remanded to the lower court for a new trial.

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

Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of September, 2026.

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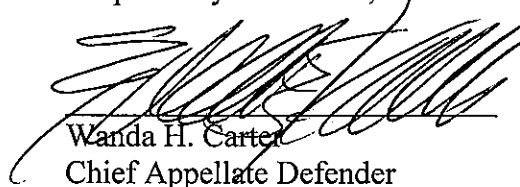
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeremiah Bostic states:

1. She is 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 William A. McKinnon, which was held from June 3-4, 2025, 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 Jeremiah Bostic.

Respectfully Submitted,


Wanda H. Carter
Chief Appellate Defender

This 11th day of September, 2026.

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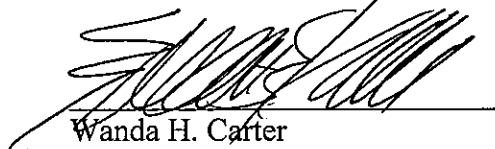
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript
- (2) Indictments and Sentence Sheets
- (3) State's Exhibit No. 1 (Body Cam DVD)
- (4) Court's Exhibit No. 1 (Body Cam DVD)

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


Wanda H. Carter
Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

This 11th day of September, 2026.

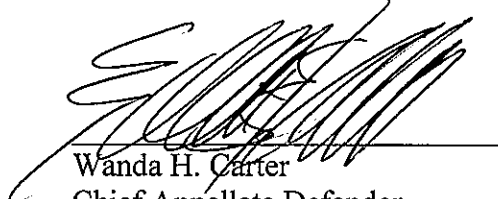
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CERTIFICATE OF COUNSEL

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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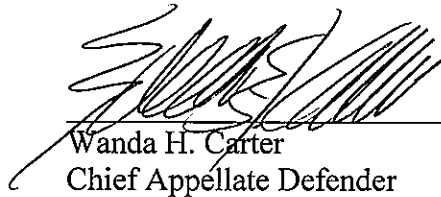
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APPELLATE CASE NO. 2025-001188

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 Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jeremiah Bostic, #397615, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 11th day of September, 2026.


Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT