

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

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JAN 31 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MAURICE WARD,

APPELLANT

APPELLATE CASE NO. 2013-001996

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

Brunson v. State, 324 S.C. 117, 477 S.E.2d 711 (1996)..... 7

State v. Stone, 285 S.C. 386, 330 S.E.2d 286 (1985)..... 7

Constitutional Provisions

S. C. Const. art. V, §21 7

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to give a jury charge on mere presence when that was appellant's defense?

STATEMENT OF THE CASE

Appellant was convicted of second degree burglary after a jury trial held before the Honorable Larry B. Hyman, Jr., on September 16 – 17, 2013, in Horry County. A fifteen (15) year sentence was imposed. J. Eric Fox, Esquire, was trial counsel. J. Steven Grooms, Esquire, and Donne E. Elder, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in failing to give a jury charge on mere presence when that was appellant's defense.

Danny Hardwick testified that he was a deacon, trustee, and Sunday School Superintendant at the Freewill Baptist Church in Conway. He responded to a call to the church on August 14, 2010, about a burglary. Sometime between 10:00 and 11:00 that night, an alarm from the security system went off. (Tr. p. 63, line 14 – p. 64, line 21). When he got to the scene, the Conway City Police were there. The entry point was determined to be a window to the right of the front door going to the fellowship hall. The window had been broken. (Tr. p. 67, lines 18 – 24; tr. p. 69, line 24 – p. 70, line 3). He saw some blood on the window and the window sill. (Tr. p. 70, lines 20 – 25). Upstairs, the pastor's door had been kicked in. There was a door going into the clerk's office and the casing around it was broken. There was a safe that was battered to the extent they could not use the combination to open the door. (Tr. p. 74, line 23 – p. 75, line 6).

Officer Eden testified that he got a phone call from the security company that managed the alarm system and they told him an alarm had gone off. He responded to the scene. (Tr. p. 80, line 22 – p. 81, line 8). He collected samples of the drops of blood on the window and on the inside and outside of the window. (Tr. p. 83, line 16 – p. 86, line 16).

David McClure testified that he worked at SLED at the time and he was over the DNA database department. The department receives DNA samples from individuals. They run their DNA profiles and put them into the combined DNA Index System (CODIS). They had a sample from appellant when he was at the South Carolina Department of Corrections. A DNA profile was developed and put into their CODIS. The samples of blood collected

from the church matched appellant's DNA profile. Another sample was collected from appellant for court purposes. (Tr. p. 133, line 10 – p. 137, line 9).

Cynthia Cale testified that she was the lead forensics serologist and DNA analyst at a private lab that tested the samples SLED submitted to them. Appellant's DNA matched the blood collected from the church. (Tr. p. 191, line 19 – p. 193, line 25). The probability of selecting an unrelated individual from the general population that would be the source of the DNA profile from the swabs from the window was one in eleven quadrillion. (Tr. p. 194, line 22 – p. 195, line 2).

Appellant testified that he did not live far from the church. On the evening of the burglary, he was riding his bicycle down Fourth Avenue around 10:00 PM to go to a friend's house. On the way, he heard the sound of breaking glass. He continued on to his friend's house, but no one was there. Instead of going right back home, he decided to be nosey and check out the church and he saw the broken window. He rode up to the window and being nosey again, he stuck his head through the window. When he did that, the alarm went off. He panicked and took off across the street. He then heard the squealing sound of tires and saw a dark-colored vehicle pulling off. (Tr. p. 221, line 1 – p. 224, line 17). Appellant said he did not go in the church and he had no intention of stealing anything. He did not break the window and he did not know who broke the window. (Tr. p. 227, lines 8 – 24).

While appellant presented a defense of mere presence, defense counsel did not request a jury instruction on mere presence.¹ The trial court failed to give a jury instruction on mere presence even though Article V, §21 of the South Carolina Constitution mandates that a “judge is required to explain so much of the criminal law as is applicable to the issues made by the evidence addressed at trial.” State v. Stone, 285 S.C. 386, 330 S.E.2d 286 (1985).

¹ In Brunson v. State, 324 S.C. 117, 477 S.E.2d 711 (1996), a defense attorney was held ineffective in failing to request a mere presence charge.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of January, 2014.

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IN THE COURT OF APPEALS

Appeal from Horry County
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THE STATE,

RESPONDENT,

V.

MAURICE WARD,

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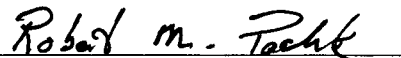
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Maurice Ward states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Larry B. Hyman, Jr., which was held on September 17, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Maurice Ward.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of January, 2014.

STATE OF SOUTH CAROLINA.

IN THE COURT OF APPEALS

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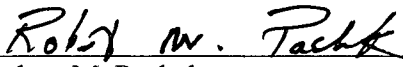
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (September 16 – 17, 2013)

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

January 31st, 2014



Robert M. Pachak
Appellate Defender

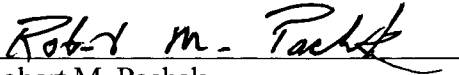
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

January 31, 2014


Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

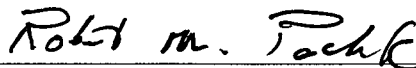
V.

MAURICE WARD,

APPELLANT

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 Maurice Ward, #281883 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 31st day of January, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of January, 2014.



Notary Public for South Carolina (L.S.)
My Commission Expires: July 24, 2022.