

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SEP 23 2013

Appeal from Lee County

William Jeffrey Young, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JESSICA BEOCKETE MOORE,

APPELLANT

APPELLATE CASE NO. 2012-212900

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion in allowing the State, after resting, to re-open their case and present the testimony of an additional witness?

STATEMENT OF THE CASE

In February of 2012, the Lee County Grand Jury indicted Moore for Arson,¹ indictment #2012-GS-31-17. On August 7, 2012, Moore proceeded to jury trial before the Honorable W. Jeffrey Young. Attorney Calvin K. Hastie, Sr. represented Moore at trial. Attorney Clifford Scott² prosecuted the case on behalf of the State. The jury returned a verdict of guilty and Judge Young sentenced Moore to fifteen (15) years in prison. A timely notice of intent to appeal was filed on August 16, 2012. This appeal follows.

¹ The indictment fails to specify what degree of Arson but the sentencing sheet reflects the charge as arson third degree. (Sentencing Sheet, R. p.*).

² The cover of the transcript lists Paul Fata for the State but contents of the transcript reflect that Mr. Scott prosecuted the case.

ARGUMENT

The trial judge abused his discretion in allowing the State, after resting, to re-open their case and present the testimony of an additional witness.

The State's case against Moore for setting her apartment on fire was based on circumstantial evidence. After presenting the testimony of seven witnesses, the State rested. (R. p. 223, line 12). Counsel for Moore moved for a directed verdict of acquittal and the judge denied that motion. (R. p. 223, line 22 – p. 224, 225, 226, lines 1-2). The next day, August 9, 2012, State's witness Kendrick Darnell Franklin appeared in court. According to the State, Franklin was listed on the State's witness list but did not appear in court and the prosecutor assumed the witness was not going to come to court. (R. p. 232, lines 5-19). There is no evidence that the witness was subpoenaed by the State. According to the State, the witness misunderstood a conversation with an assistant in the prosecutor's office and believed that his attendance was not needed at trial. (R. p. 232, lines 15-19). The State moved to re-open the case and call Franklin as a witness. (R. p. 232, lines 22-24).

Counsel for Moore objected to allowing the State to re-open the case and call Franklin as a witness. (R. p. 233, lines 1-11). The judge overruled the objection stating, "There's no prejudice. Okay, I respectfully disagree with your position. I find that there is no prejudice to the defense, and I will allow the State to open to call another witness." (R. p. 233, line 24 – p. 234, lines 1-3). Franklin testified about a statement he made to police indicating that Moore and a co-defendant, Shakilya Hudson, discussed burning Moore's apartment. (R. p. 241, lines 1-21). Franklin also told police that, "Jessica [Moore] told me that she took Shakiyla and parked on a street over from the apartment complex and sent Shakiyla to the apartment to set the fire. After they set the fire, Jessica said they went to a club." (R. p. 241, line 22 – p. 242, line 1). Hudson was charged as an accessory before the

fact and accessory after the fact in counts two and three of the same indictment charging Moore with arson, indictment #2012, GS-31-17. (Indictment, R. p. *). Hudson testified against Moore and denied lighting the fire but admitted to helping Moore spread accelerant throughout the apartment. (R. pp. 140-150).

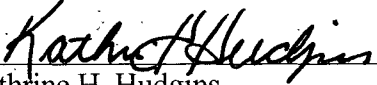
In State v. Wren, 322 S.C. 103, 470 S.E.2d 111, 112, (Ct.App. 1996) the South Carolina court of appeals wrote, "For the edification of the Bench and Bar, we encapsulate the rule enunciated in State v. Humphery, 276 S.C. 42, 274 S.E.2d 918 (1981); State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978); and State v. Harrison, 236 S.C. 246, 113 S.E.2d 783 (1960). A motion to reopen the evidentiary record and to allow additional evidence is addressed to the sound discretion of the trial judge. His ruling will not be reversed absent an abuse of discretion. A trial is a search for the truth; concomitantly, liberality is the linchpin of the rule."

Under the specific facts of this case, based on circumstantial nature of the evidence and with no proof that the State served witness Franklin with a subpoena to compel his presence at trial, the judge's decision to allow the State to reopen the case and call the witness constitutes an abuse of discretion requiring reversal.

CONCLUSION

Based on the above argument, Moore's sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of September, 2013.

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IN THE COURT OF APPEALS

Appeal from Lee County
William Jeffrey Young, Circuit Court Judge

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JESSICA BEOCKETE MOORE,

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APPELLATE CASE NO. 2012-21290

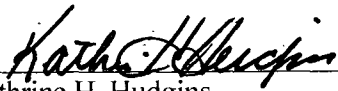
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jessica Beockete Moore 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 William Jeffrey Young, which was held on August 8-9, 2012, 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 Jessica Beockete Moore.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of September, 2013.

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THE STATE,

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APPELLANT

APPELLATE CASE NO. 2012-212900

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

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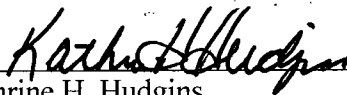
SC Court of Appeals

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

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript;
- (3) State's Exhibit #2 - Addendum to Lease;
- (4) State's Exhibit #3 - Notice of Termination;
- (5) State's Exhibit #4 - Policy Info;
- (6) State's Exhibit #5- Fire Claim Service Record;
- (7) State's Exhibit #6- Ledger and copies of check;
- (8) State's Exhibit #7- List of damaged items;
- (9) State's Exhibit #8- statement of Ms. Magazine;
- (10) Defense Exhibit #1 - 6/19/11 statement of Shakilya Hudson;
- (11) Defense Exhibit #2 - 6/20/11 statement of Shakilya Hudson;
- (12) Defense Exhibit #3 - 8/6/11 statement of Shakilya Hudson;
- (13) Defense Exhibit #4 - 9/7/11 statement of Shakilya Hudson.

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

September 23rd, 2013


Kathrine H. Hudgins
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."

September 23, 2013


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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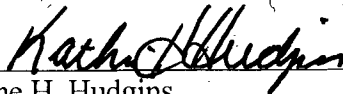
JESSICA BEOCKETE MOORE,

APPELLANT

APPELLATE CASE NO. 2012-212900

CERTIFICATE OF SERVICE

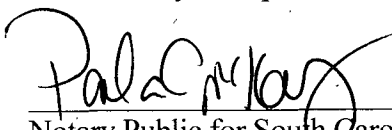
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Jessica Beockete Moore, 351909 at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649 this 23rd day of September, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of September, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.