

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 26 2014

SC Court of Appeals

Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CURTIS FIELDS,

APPELLANT

APPELLATE CASE NO. 2013-001087

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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 CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

State v. Crocker, 366 S.C. 394, 404, 621 S.E.2d 890 (Ct. App. 2005)..... 6

State v. McCoy, 98 S.C. 133, 82 S.E. 280 (1914)..... 6

State v. Williams, 321 S.C. 327,468 S.E.2d 626 (1996) 6

Constitutional Provisions

S. C. Const. art I, § 11 6

STATEMENT OF ISSUE ON APPEAL

Whether appellant was entitled to a directed verdict because the alleged crime did not occur in the county of his trial?

STATEMENT OF THE CASE

On February 21, 2013, appellant was indicted in Hampton County for misconduct in office and third degree criminal sexual conduct. R. 294-297. On March 13, 2013, appellant was tried before the Honorable Carmen T. Mullen and a jury. R. 1. Sean Thornton represented the State. R. 2. Christopher Geier represented appellant. R. 2. The jury convicted appellant of both charges. R. 256, ll. 5 – 17. Judge Mullen sentenced appellant to concurrent terms of ten years' imprisonment. R. 270, ll. 7 – 17. On May 7, 2013, Judge Mullen heard appellant's motion to reconsider his sentence. R. 272-292. On May 9, 2013, Judge Mullen denied the motion. R. 293. A timely notice of appeal was served and filed and this appeal follows.

ARGUMENT

Appellant was entitled to a directed verdict because the alleged crime did not occur in the county of his trial.

Very few facts in this case were disputed. Appellant was a police officer employed by the Town of Yemassee. R. 162, ll. 6 – 19. On the night of November 5, 2011, he was “running radar” on Interstate 95 in Hampton County. R. 162, l. 14 – 163, l. 4. He was located between mile markers 37 and 38. R. 163, ll. 2 – 4. He clocked Michael Sheen (“Sheen”)¹ driving northbound at 101 miles per hour. R. 163, ll. 14 – 19. Appellant turned on his blue lights and pulled Sheen. R. 163, ll. 20 – 23.

Sheen pulled over near Salkehatchie Road, which is in Hampton County. R. 164, ll. 20 – 25. R. 190, l. 20 – 191, l. 7. Sheen’s car had Ohio plates. R. 192, ll. 11 – 14. Yemassee’s usual practice was to arrest out-of-state drivers who exceed 100 miles per hour. R. 166, l. 11 – 167, l. 1. Appellant informed Sheen of this possibility. R. 168, ll. 3 – 6. Sheen began to cry. R. 170, ll. 6 – 14.

At this point, Sheen and appellant’s testimony begin a brief divergence. Sheen claimed that appellant kept asking her if she would “do anything” to get out of the speeding ticket and intimated that he knew a place where they “could pull off the road somewhere; are you catching my drift.” R. 71, ll. 14 – 23. Appellant testified that Sheen was the first to say that she would “do anything” to get out of the ticket. R. 170, ll. 20 – 23.

Appellant’s and Sheen’s testimony then largely converged on what happened next. Sheen followed appellant over the county line into Colleton County to a turn-

¹ Michael Sheen is a woman.

around in the interstate's median. R. 171, ll. 9 – 175, l. 23. Sheen then performed oral sex on appellant. R. 175, ll. 24 – 25. Afterwards, Sheen left. R. 176, ll. 4 – 20.

After the close of the evidence, appellant moved for a directed verdict on the ground that the oral sex occurred in Colleton County, not Hampton County. R. 219, l. 14 – 220, l. 23. Appellant renewed the constitutional jurisdictional and venue argument made after the State rested. R. 219, ll. 15 – 21. R. 135, l. 2 – 142, l. 19. The State did not dispute that the sex occurred in Colleton County, but argued that it was a continuing offense from the initial traffic stop in Hampton County. R. 135, l. 2 – 142, l. 19. The trial judge agreed with the State that it was a continuing offense. R. 138, ll. 5 – 10. R. 220, l. 24 – 221, l. 17. Appellant renewed his motion after the jury's verdict and it was denied. R. 265, ll. 1 – 20.

South Carolina's citizens have a constitutional right to be indicted and tried in the county "where the crime has been committed." S.C. Const. art I, § 11. "A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996) In State v. McCoy, 98 S.C. 133, 82 S.E. 280 (1914), the Supreme Court reversed because the trial judge failed to grant a directed verdict when the evidence showed that the crime occurred in a county that differed from the county where the indictment was obtained.

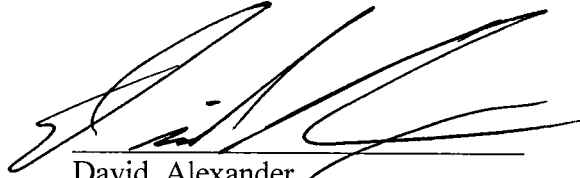
"Where some acts material to the offense . . . occur in one county, and some in another, venue is proper in either county." State v. Crocker, 366 S.C. 394, 404, 621 S.E.2d 890, 895 (Ct. App. 2005) (internal quotations omitted). All of the material acts of this alleged offense occurred in Colleton County, not Hampton County. It is undisputed that no

sex occurred in Hampton County. The sex was the sole basis for the charge of misconduct in office. Sheen was in her own car and drove to the site where they had sex in Colleton County. She could have simply driven away. Appellant testified that he would have not have stopped her had she done so. R. 196, ll. 19 – 22. Appellant asked Sheen if she was sure she wanted to have sex when they arrived in Colleton County and she responded affirmatively. R. 201, ll. 10 – 14. Therefore, while the initial contact occurred between appellant and Sheen in Hampton, all of the material elements of the alleged offense occurred in Colleton County. The court erred in not granting a directed verdict and appellant's conviction should be reversed.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

FEB 26 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURTIS FIELDS,

APPELLANT

APPELLATE CASE NO. 2013-001087

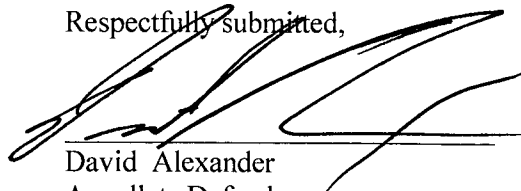
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Curtis Fields 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 Carmen T. Mullen, which was held on March 13, 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 Curtis Fields.

Respectfully submitted,


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Carmen T. Mullen, Circuit Court Judge

RECEIVED

FEB 26 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURTIS FIELDS,

APPELLANT

APPELLATE CASE NO. 2013-001087

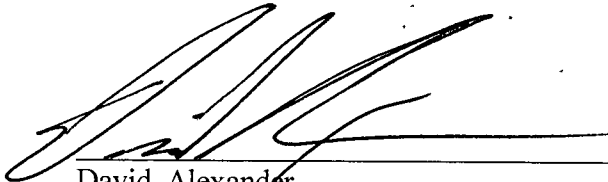
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial Transcript;
- (3) May 7, 2013, Hearing Transcript;
- (4) Order filed May 9, 2013.

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

February 26th, 2014



David Alexander
Appellate Defender

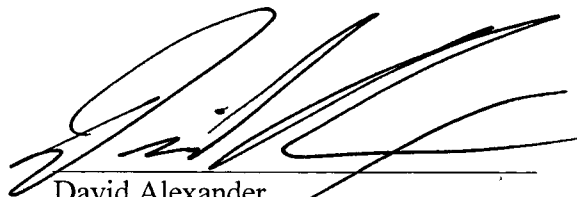
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

February 26th, 2014



David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED
FEB 26 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 26 2014

SC Court of Appeals

Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

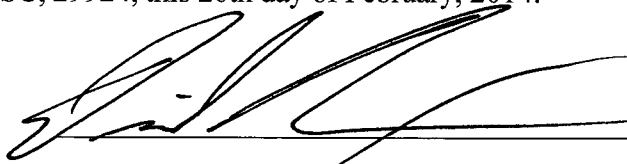
CURTIS FIELDS,

APPELLANT

APPELLATE CASE NO. 2013-001087

CERTIFICATE OF SERVICE

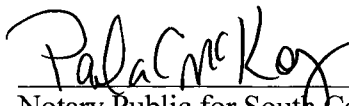
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also upon Curtis Fields care of Angela Fields at 2095 Brookwood Dr. Hampton SC, 29924, this 26th day of February, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of February, 2014.

 (L.S.)

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