

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 10 2014

Appeal from York County

SC Court of Appeals

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JANET MARGARET WATKINS,

APPELLANT

APPELLATE CASE NO., 2013-002441

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in allowing the jury to view inadmissible evidence, i.e., state's exhibit #2 (picture of bag of methamphetamine), in order to prove the corpus delicti of the crime because the foundation for the exhibit was not laid prior to its entrance into evidence at trial.

STATEMENT OF THE CASE

Appellant Janet Margaret Watkins was convicted of possession of methamphetamine per jury trial held during the November 2013 term of the York County General Sessions Court before Judge Daniel Hocker. Ashley Anderson represented appellant at the plea proceeding and Assitant Solicitors Marina Hamilton and Chris Epting appeared on behalf of the state. Appellant was sentenced to imprisonment for a period of two years, suspended upon the service of 90 days weekend detention service, and probation for a period of two years.

Appellant appealed her conviction and sentence. This brief follows.

ARGUMENT

The lower court erred in allowing the jury to review inadmissible evidence, i.e., state's exhibit # 2 (picture of bag of methamphetamine), in order to prove the corpus delicti of the crime because the foundation for the exhibit was not laid prior its entrance into evidence at trial.

Appellant was tried on the offense of possession of methamphetamine. The state's case consisted of the following four witnesses: a Walmart employee, a police officer, a chemist, and an evidence custodian.

At trial, Walmart employee Kasi Parker testified that she encountered appellant, who was stumbling and slurring in the store on the night of April 26, 2013, and that she later escorted appellant to the store's loss prevention office and then notified the York County Police Department. App. 61, l. 10 – p. 63, l. 3. Officer Tony Cotton stated that he arrived at the store shortly after 9:00 P.M. on that date and asked appellant to empty her pockets. Officer Cotton explained that appellant pulled out a film container that contained a bag of a white powdery substance and that photographs of the container (state's exhibit #1) and plastic bag of the white powdery substance (state's exhibit # 2) were taken. App. 71, l. 11 – p. 75, l. 16. Chemist Cynthia Mitchum of the York County Sheriff's Office testified that the bag contained .04 grams of methamphetamine. Tr. 89, l. 6 – p. 92, l. 12.

During Kasi Parker's testimony, the foundation was laid for the admission of state's exhibit #1 (container). Parker explained that she saw the container when it was surrendered by appellant and retrieved by Officer Colton, and that the picture of the container (exhibit 1) was taken thereafter. Tr. 64, l. 1 – p. 68, l. 23. However, when a picture of the plastic bag containing the white powdery substance, which was State's exhibit

#2, was offered into evidence via Officer Cotton's testimony, no foundation was laid before admitting the exhibit into evidence. Tr. 73, l. 24 – p. 75, l. 18. Therefore, defense counsel objected to the admission of this exhibit because no foundation was laid in reference to state's exhibit # 2, but the court overruled the objection and allowed the picture into evidence at trial. App. 75, l. 17 – p. 76, l. 25. Note that counsel renewed this objection at the close of the state's case as follows:

Defense Counsel: Yes, Your Honor, a few things for the record, one, as we discussed up at the bench, Your Honor had indicated that you would admit State's Number 2 over defense objection.

Court: Right.

Defense Counsel: but to put that on the record the defense's objection, the objection would be as to the – I guess the foundation of the photograph. There was no testimony the Officer Cotton was the one who took that photograph. While he initially testified at the time the State sought to admit the item into evidence that it fairly and accurately depicted the item, it does appear that and it was sort of clarified on later cross examination of redirect that it does not fairly and accurately depict the item at the time it was taken into evidence...I would object to the witness's foundation for admitting that item into evidence as I do not believe it does, in fact, fairly and accurately depict the item at the time as was testified by the officer. Just wanted to preserve that for the record. Tr. 97, l. 14 – p. 98, l. 11.

Appellant testified at trial and explained that she realized that her son's friend Andrew was carrying a bag containing methamphetamine in his (Andrew's) pocket. Appellant added that she took it from him and put in her pocket (and threaten to tell his mom) because she did not want the drugs in her house, and then apparently forgot about the fact that she placed the same in her pocket before going to Walmart. Appellant stated that she did not intend to keep or use the substance. Tr. 127, l. 2 – p. 132, l. 5.

In closing, defense counsel argued that appellant had possession, but no criminal intent in reference to the crime charged against her. Tr. 138, l. 1 – p. 142, l. 24.

A witness must have personal knowledge of an exhibit in order to authenticate it prior to its entrance into evidence at trial. See Rules 901 and 902, SCRE. In other words, a proper foundation must be laid before an exhibit is introduced into evidence at trial. State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (2001). Here, Walmart employee Parker had nothing to do with the investigation in the case, and neither took the photograph of the bag of methamphetamine (state's exhibit # 2), nor had any involvement with the taking of the photograph of the same. Said employee only saw appellant pull out a container and then observed Officer Cotton take possession of it. Tr. 69, l. 6 - p. 70, l. 22; App. 68, l. 8 – 15. Officer Cotton did not provide foundational information on state's exhibit #2 either. Therefore, State's exhibit # 2 (picture of methamphetamine) should not have been viewed by the jury as an exhibit because there was no proper foundation laid regarding the same prior to its admission into evidence at trial.

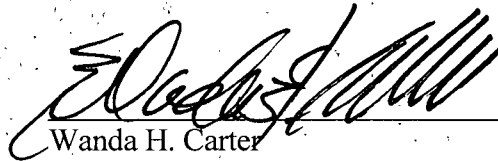
Appellant was prejudiced by the introduction of the exhibit because it was used to show proof of the corpus delicti of the crime. The corpus delicti of the crime is the body, foundation or substance of the crime, which includes the elements of the crime. City of Easley v. Portman, 327 S.C. 593, 490 S.E. 2d 613 (1997); State v. Smith, 328 S.C. 622, 493 S.E.2d 506 (1997). The trial judge charged the jury that the state was required to prove that appellant possessed the drug by showing the power and intent to control the disposition or use of the drug and the mental state of criminal intent. Tr. 151, l. 13 – p. 152, l. 3. Here, since appellant's defense was there was an absence of criminal intent, the state's use of state's exhibit #2 was erroneously admitted into evidence, in order to prove the corpus

delicti of the offense charged and the result was the denial of appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Based on the foregoing argument, appellant asks that her conviction and sentence be reversed and her case remanded to the lower court for a new trial.

Respectfully submitted,

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

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of March, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Janet Margaret Watkins states:

1. She is Deputy 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 Donald B. Hocker, which was held on November 5, 2013, 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 Janet Margaret Watkins.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of March, 2014.

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Appeal from York County

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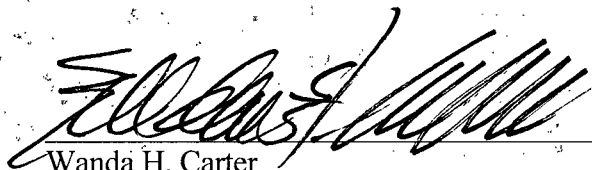
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript
- (3) State's Exhibit #2

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

March 10th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

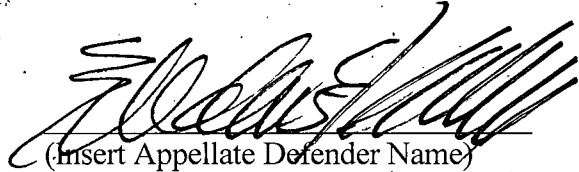
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Attorney for Appellant

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."

(March 10, 2014)



(Insert Appellate Defender Name)

Appellate Defender

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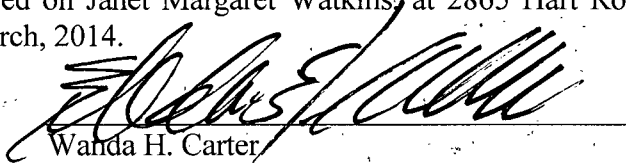
JANET MARGARET WATKINS,

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APPELLATE CASE NO. 2013-002441

CERTIFICATE OF SERVICE

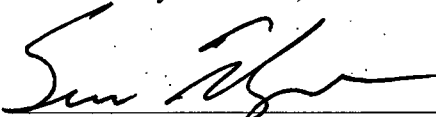
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon , Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Janet Margaret Watkins, at 2865 Hart Road, Clover, SC 29710, this 10th day of March, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022