

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 25 2014

SC Court of Appeals

Appeal from Florence County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PANDORA HARDY,

APPELLANT

APPELLATE CASE NO. 2013-002078

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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TABLE OF AUTHORITIES

Cases

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in failing to define to the jury the meaning of a statement versus a confession in light of appellant's admission that although she was the person who appeared on the surveillance videotape at the ATM machine in question; nonetheless, she testified that she was using her own debit card to make a withdrawal and never possessed a stolen debit card because the rule that "not every admission is a confession" from State v. Osborne, 355 S.C. 172, 516 S.E.2d.201 (1999), applied in the case.

STATEMENT OF THE CASE

Appellant Pandora Hardy was convicted of financial transaction card theft and financial transaction card fraud per jury trial held during the September 2013 term of the Florence County General Sessions Court before Judge Howard P. King. Appellant was sentenced to imprisonment for an aggregate period of one year suspended upon time served. Michael Bell represented appellant at trial, and Assistant Solicitor Emily Crayton appeared on behalf of the state.

Appellant appealed her trial court convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in failing to define to the jury the meaning of a statement versus a confession in light of appellant's admission that although she was the person who appeared on the surveillance videotape at the ATM machine in question; nonetheless, she stated that she was using her own debit card to make a withdrawal and never possessed a stolen debit card because the rule that "not every admission is a confession" from State v. Osborne 355 S.C. 172, 516 S.E.2d 201 (1999), applied in the case.

At trial, Francis Marion University faculty member Dr. Tracey Meetz testified that after checking the faculty credit card statement on April 8, 2011, she realized that money was missing from the account because the balance was low per withdrawals made from the account. Dr. Meetz then noticed that the faculty credit card and PIN number were missing from her desk drawer. Dr. Meetze contacted campus police immediately thereafter and filed a police report in the matter. Tr. 68, l. 12 – p. 75, l. 16.

Florence County Police Officer Kenneth Pittman's investigation into the case led him to a particular person who was connected to an April 7, 2011, ATM transaction emanating from Ken's Corner Store located near Francis Marion University. Surveillance videotapes tapes from that store camera yielded an identification of this person from store owner (Chin Patel). Patel identified the person making an ATM withdrawal on the videotape at that time as appellant and added that she (appellant) worked as a member of the custodial staff at Francis Marion University. Officer Pittman testified that he spoke with appellant about the videotape in May 2011, and that appellant confirmed that indeed she used the ATM at the store in question on April 7, 2011, but

that she used her own debit card at the ATM on the date to withdraw money from the machine. Tr. 145, l. 11 – p. 157, l. 1.

Mitchell Pressley, who was the custodial services superintendent at the University at that time, testified that appellant was a custodial worker in the Media Center where Dr. Meetze's office was located, and that appellant's employment time card reflected that she worked on April 7, 2011. App. 118, l. 23 – p. 124, l. 15.

Appellant neither testified at trial nor presented any evidence in her defense. During closing arguments, defense counsel argued that appellant's natural reaction to being caught on camera at an ATM machine was to respond that if she used the machine then she used her own ATM card at the machine, but that a closer inspection of the video revealed that she was actually laying something like a receipt or a napkin or change on the machine instead, and that there was no proof beyond a reasonable doubt that appellant used the ATM machine to withdraw money, which in turn supported the defense's theory of the case that "sometimes things aren't what they appear". Tr. 195, l. 13 – 14, Tr. 198, l. 3 – p. 200, l. 17.

During jury deliberations, the jurors asked for "information on her (appellant) saying it was her on [the] video (by her lawyer)." Tr. 218, l. 22-24. The trial judge's response follows:

The Court: So that's what I will do. With regard to...giving information on her saying it was her on video by her lawyer, that would require comment on the facts by me and I don't think that I can say a thing about that and I'll just tell them they have to rely upon their recollection of the testimony. Tr. 219, lines 12-17.

The trial judge properly explained that trial counsel's statements did not constitute evidence (Tr. 221, lines 12-20), but failed to charge the jury (in reference to appellant's

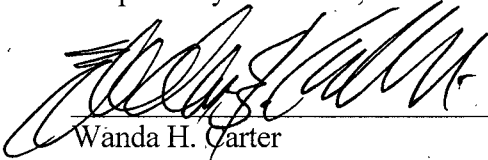
statement admitting she was at the ATM machine using her own card) that there is a difference between the definition of a statement and the definition of a confession. It appeared as though the jury was confused and did not know whether appellant's statement admitting she was on the videotape constituted a confession. Therefore, the jury apparently needed an explanation of the definition of a statement and the definition of a confession.

In State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999), the defendant's statement that he had not had anything to drink after the car wreck he was involved in did not acknowledge guilt on his DUI charge. In Osborne, the Court held that a confession is an acknowledgment of guilt, but that a statement is series of facts from which guilt may be inferred, and that "every confession is an admission, [but] not every admission is a confession." Since appellant's statement was not a confession in this case, the judge's failure to clarify the distinction between a statement and confession constituted error because the jury probably misunderstood appellant's statement. This is probably why the jury returned to court with a jury question about appellant's statement in the first place. Undoubtedly, the jury misinterpreted appellant's acknowledgment that she was on the video at the ATM machine as being tantamount to a confession in connection with the crimes charged against her in the case when the same was merely a statement. This error denied appellant of her right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1, section 3 of the South Carolina State Constitution.

CONCLUSION

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

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2014.

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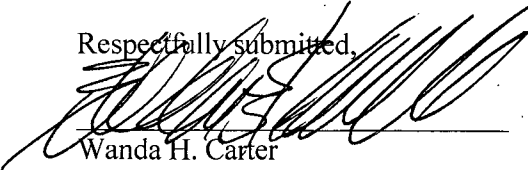
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Pandora Hardy 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 Howard P. King, which was held on September 19, 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 Pandora Hardy.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2014.

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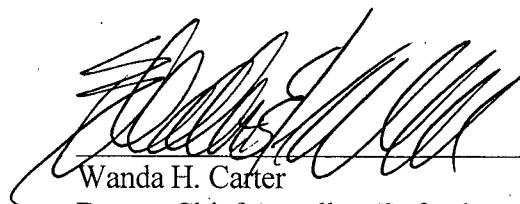
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Transcript

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

June 25th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

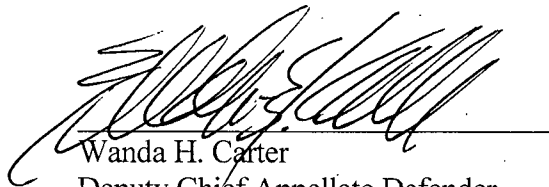
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 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."

June 25, 2014.



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Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
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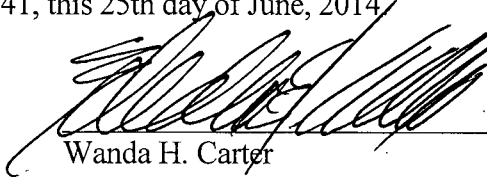
V.

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CERTIFICATE OF SERVICE

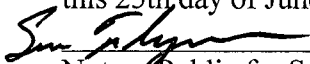
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Pandora Hardy, at 2411 Whippoorwill Road, Effingham, SC 29541, this 25th day of June, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of June, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.