

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County

C. Victor Pyle, Junior, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JAN - 2 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

v.

RESPONDENT

CEDRIC C. PATTON,

APPELLANT,

APPELLATE CASE NO. 2013-001029  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
PURSUANT TO WHITE V. STATE  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief 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**

The trial judge erred in failing to qualify the interpreter used at appellant's trial because this was a requirement per S.C. Code Ann. §17-1-50.

## STATEMENT OF THE CASE

Appellant Cedric C. Patton was convicted of armed robbery and possession of a weapon during a violent crime at the July 2010 term of the Greenville County General Sessions Court before Judge C. Victor Pyle, Junior. Appellant was sentenced to prison for an aggregate term of twenty-five years. App. 1-153. Dan Farnsworth represented appellant at trial and Assistant Solicitor Perry DeLoach appeared on behalf of the state in the case. Appellant did not enjoy the benefit of a direct appeal in the case.

On March 9, 2011, appellant filed a PCR application with the Greenville County Office of the Clerk of Court. App. 155-161. The respondent filed a return requesting that a hearing be held in response to appellant's action filed in the case. App. 162-165.

A PCR hearing was convened on April 18, 2013, at the Greenville County Courthouse before Judge G. Edward Welmaker. Appellant was present at the hearing and represented by Elizabeth Wiygul at that time. Trial counsel Dan Farnsworth was not present at the PCR hearing due to health issues. Assistant Attorney Karen Ratigan appeared on behalf of the state at the PCR hearing.

On April 3, 2013, Judge Welmaker issued an Order granting appellant's request for a belated direct appeal via White v. State,<sup>1</sup> but denied the remainder of his allegations of ineffective assistance of counsel in the case. App. 187-193.

Appellant appealed Judge Welmaker's Order. This petitioner follows.

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<sup>1</sup> 263 S.C. 110, 208 S.E.2d 35 (1974).

## ARGUMENT

The trial judge erred in failing to qualify the interpreter used at appellant's trial because this was a requirement per S.C. Code Ann. § 17-1-50.

At trial, Alfredo Cortez-Roa testified that he was present at Club Caliente on the morning of May 16, 2009, around 2:30 a.m., and went to his car to smoke a cigarette when he saw several persons whom he believed looked suspicious walk near his car. Roa stated that a female (Emma Rosario) was seated in his car with him in the passenger seat while he smoked. Roa went on to explain that minutes later, two males returned to his car along with a female, and that one male came to his side of the car, put a gun to his head and ordered him to surrender his wallet, money, phone, and other personal effects. Roa added that a female holding a baseball bat appeared at the passenger side window and demanded money from the female who sat with him in the car, but that she had no money to give. Roa stated further that he gave the perpetrator his money, driver's license and citizen's papers, and his cell phone. App. 21, l. 1-p. 37, l. 20; App. 30, l. 11-p. 31, l. 20.

State's witness Santana Carrington testified that she and appellant and Kaitlin Rochester were involved in the robbery of Roa at Club Caliente on the night in question, and that appellant put a gun to the "male Mexican's head" and that she held a bat and stood at the passenger side of the car. App. 79, l. 5-p. 83, l. 11.

State's witness Kaitlin Rochester testified that she and appellant met up with Carrington on the night of the Club Caliente robbery and that appellant had a gun, and that it was his (appellant's) idea to "get em." Rochester explained that appellant went up to the driver's side of the car, held a gun to the driver's head and demanded money, which he received. Rochester stated that Carrington stood at the passenger side wielding a baseball

bat, and that she (Rochester) stood at the back of the vehicle (presumably as a look-out). Rochester stated that she and Carrington received \$40.00 cash from the robbery. App. 91, l. 16-p. 97, l. 11.

Appellant did not testify at trial, but he put forth an alibi defense before the jury. Defense witness A.J. Smith testified that he was with appellant on the night of May 15, 2009, after he picked-up appellant and brought him to his home shortly before midnight; and that around 2:00 a.m. on May 16, 2009, they were watching television and playing on the computer. Smith stated that he and appellant woke up at 4:45 a.m. and left the house shortly thereafter to look for job opportunities. App. 1, 1-p. 113, l. 21.

Prior to trial, the interpreter was sworn in by the trial judge as follows:

Solicitor: Your Honor, the State calls Jose Alfredo Cortez-Roa to the stand. Your Honor, this witness will be speaking through an interpreter.

The Court: All right. Very well, swear her.

The Clerk: Do you solemnly swear or affirm that you will accurately interpret the language requested in this courtroom of the defendant without additions thereto or detractions therefrom or any other amendments of your own interpretation, so help you God?

The Interpreter: I do.

The Clerk: Thank you. App. 20, lines 6-16.

The qualification portion of the interpreter was missing from this trial colloquy. S.C. Code Ann. §17-1-50 outlines the rules for receiving the testimony of interpreters as follows:

(A) Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not speak the English language sufficiently to testify, the court may appoint a qualified interpreter to interpret the proceedings

and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

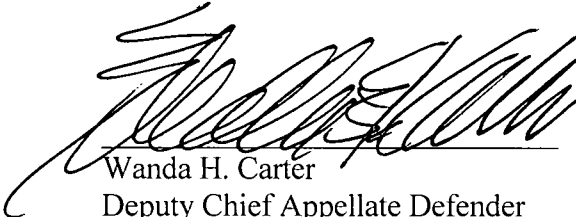
- (B) An interpreter means a person who:
- (1) is eighteen years of age or older;
  - (2) is not a family member of the party or witness;
  - (3) is an instructor of a foreign language at an institution of education; or
  - (4) has educational training or experience that enables him or her to fluently speak the language of another person.

The trial judge erred in failing to qualify the interpreter used at appellant's trial as required per S.C. Code Ann. §17-1-50 prior to the swearing-in of the interpreter at trial.

CONCLUSION

Based on the foregoing argument, appellant requests that his case be reversed and remanded to a lower court for a new trial with an interpreter qualified on the record.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Greenville County  
C. Victor Pyle, Junior, Circuit Court Judge

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APPELLANT,

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PETITION TO BE RELIEVED AS COUNSEL

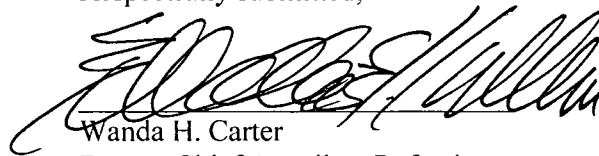
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Counsel for Cedric C. Patton states:

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 C. Victor Pyle, Junior, which was held during the July 2010 term of General Sessions Court, 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 Cedric C. Patton.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

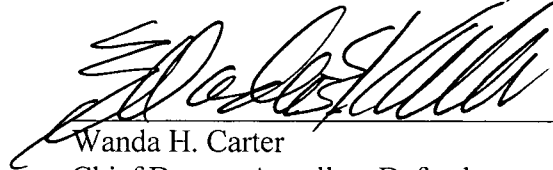
ATTORNEY FOR APPELLANT

This 2nd day of January, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant pursuant to White v. State 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 2<sup>nd</sup>, 2014

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

Wanda H. Carter  
Chief Deputy Appellate Defender

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Columbia, South Carolina 29211-1589

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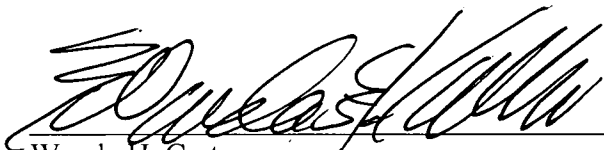
RESPONDENT

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State and Record on Appeal have been served on Cedric C. Patton, #3044790 at McCormick Correctional Institution, this 2nd day of January, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 2nd day of January, 2014.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022