

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 19 2014

SC Court of Appeals

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEIRON COLEMAN,

APPELLANT

APPELLATE CASE NO. 2013-000604

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the jury to hear testimony that marijuana was found in the get-a-way vehicle used after the alleged burglary because the discovery of marijuana in this vehicle was irrelevant and inadmissible prior bad act evidence that prejudiced appellant's defense as the only items taken from the home in question were a camera, jewelry, and two jewelry boxes.

STATEMENT OF THE CASE

Appellant Keiron Coleman was found guilty of first degree burglary per jury trial held during the March 2014 term of the Horry County General Sessions Court before Judge Larry B. Hyman. Appellant was sentenced to imprisonment for a period of twenty-five years. J.M. Long represented appellant at trial, and Assistant Solicitors George DeBusk and Nancy R. Livesay appeared on behalf of the State.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in allowing the jury to hear testimony that marijuana was found in the get-a-way vehicle used after the alleged burglary because the discovery of marijuana in this vehicle was irrelevant and inadmissible prior bad act evidence that prejudiced appellant's defense as the only items taken from the home in question were a camera, jewelry, and two jewelry boxes.

At trial, Susan Marotte testified that she returned to her Myrtle Beach home on March 25, 2013, to find that the alarm had been "tripped" and the window (and window screen) of her master bedroom "ajarred," and a camera, jewelry, and two jewelry boxes were missing from inside her home. Tr. 120, 1.1 - p. 128, 1.18.

Also at trial, state's witness Shakerra Cowan stated that on March 25, 2013, she drove appellant and Jordan Dudley¹ in her vehicle to a particular neighborhood in Myrtle Beach and parked there while they (Dudley and appellant) walked up to a particular residence. According to Cowan, the two later returned to her vehicle with jewelry and jewelry boxes. Cowan stated that police stopped them as they drove out of the neighborhood, and that a search of her vehicle followed. Tr. 284, 1.1- p 306 1.7.

Police Officer Natalie Boyd assisted with the search of Cowan's car after Officer Rick Tibbott initiated the traffic stop and detained Cowan and company on that date. After Cowan granted consent to search, Officer Boyd found a camera, two jewelry boxes, jewelry, and green leafy filled plastic bags. Tr. 244, 1.1-1, 247, 1.17; Tr. 251, 1.1-p. 254, 1.11. Additionally, a search of appellant by Officer Tibbott yielded jewelry in his (appellant's) pants pockets. Tr. 179, 1.23 - p. 180, 1.25, Tr. 156, 1.25 - p. 158, 1.24. Appellant and Dudley were charged with burglary, and

¹ At the outset, Jordan Dudley was on trial along with appellant in this case as a codefendant, but he pled guilty to second degree burglary prior to appellant's trial.

Cowen was charged with possession of marijuana. Tr. 181 l, 1 – 4. The jewelry confiscated from the car included necklaces, earrings, and rings, and bracelets. Tr. 161, 1.16 - p. 162, 1.9. Subsequently, homeowner Susan Marotte and her daughter identified and claimed all of the jewelry and the jewelry boxes and camera found in the vehicle per the search as items belonging to them. Tr. 265, l. 21- p. 268, l. 21, Tr. 125, lines 18-24.

Appellant testified at the hearing and explained that he and Dudley were in the vehicle Cowan drove on the day in question, but that it was Dudley who went into the Marotte residence and brought out the items in belonging to the Marotte family. Tr. 351, l. 1 – p. 376, l. 10.

Since appellant had not been charged with any marijuana or drug offense and was being tried only on a burglary charge in connection with the entering and taking of a camera, jewelry, and two jewelry boxes from the Marotte residence; then it was error to include testimony that a search of the vehicle of all three occupants per a traffic stop revealed not only the presence of the items taken from the Marotte home, but also the presence of marijuana inside as well. The issue of marijuana served only to prejudice appellant and suggest that he and the company he kept were unsavory characters who obviously held the criminal propensity to commit crimes of all different sorts.

Compare the case State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990), where the defendant was on trial for the murder of one Lark Lawson. In Peake, the state presented evidence of the defendant driving his car behind Lawson's car headed in the direction of the crime scene, and that both cars were parked at the crime scene thereafter, and the fibers at the scene matched the fibers in appellant's car. However, error occurred in Peake when testimony surfaced at trial that the defendant offered to sell Lawson marijuana a week prior to her murder.

The court reversed in Peake due to this marijuana testimony and held that the prejudicial value of this testimony outweighed the probative value because there was “no connection between appellant’s prior offer to sell marijuana to the victim and the circumstances of her death. “ The Peake court held as follows:.

Evidence of prior criminal acts which are independent and unconnected to the crime for which an accused is on trial is inadmissible for purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged.

Evidence is relevant and probative if it has any tendency to establish, or make more or less probable that the accused committed the crime charged against him. State v. Wiles, 383 S.C. 159; 679 S.E. 2d 172 (2009); State v. Rivera, 402 S.C. 225; 741 S.E. 2d 694, (2013). Any evidence that presents an undue tendency to suggest that a decision be made on an improper basis results in unfair prejudice that damages the defense. State v. Rivera, supra, State v. Dickerson, 341 S.C. 391, 535 S.E. 2d 119 (2000). Compare State v. Langley, 334 S.C. 643, 515 S.C. 2d 98 (1999), where the Court reversed and found that the admission of a high school photograph of the deceased while living into evidence was reversible error due to its prejudice and because it was not relevant in proving whether the defendant was guilty of the offense of murder charged against him. Also, evidence of other crimes can only be admitted if the same reasonably leads to an inference of guilt by a chain of logic but does not include an inference suggesting the bad character of the defendant. State v. Cutro, 332 S.C. 100, 504 S.E.2d 324 (1998); State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998).

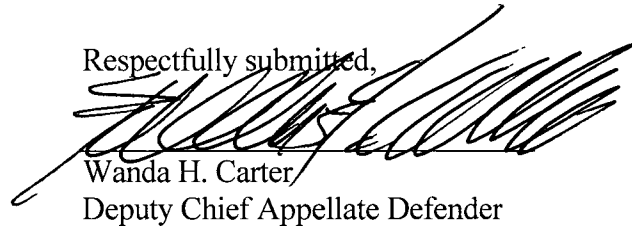
Here, the burglary charge did not include theft of marijuana from the Marotte house. Rather, the state alleged that a camera, jewelry, and two jewelry boxes were taken out of that residence. Therefore, the drug testimony that surfaced at trial here was irrelevant and served

only to damage appellant's character and prejudice his defense, all of which violated his right to receipt of 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 his conviction and sentence be reversed and his 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 19th day of August, 2014.

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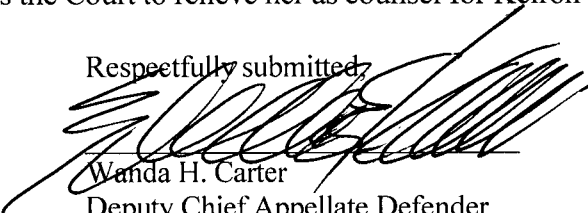
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Keiron Coleman 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 Larry B. Hyman, Jr., which was held on March 13, 2014, 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 Keiron Coleman.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of August, 2014.

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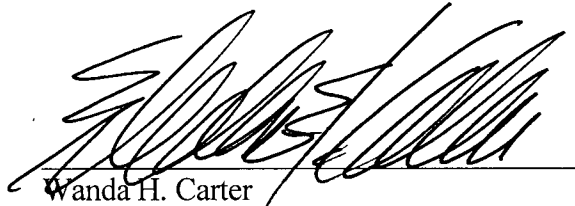
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

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

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

August 19, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

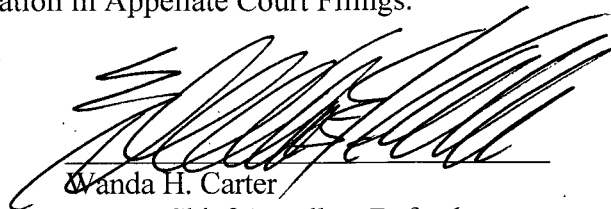
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

August 19, 2014



Wanda H. Carter

Deputy Chief Appellate Defender

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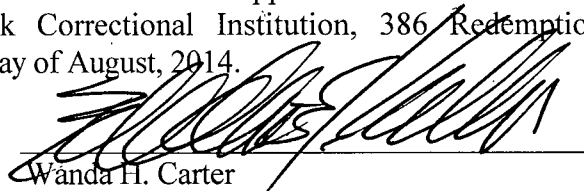
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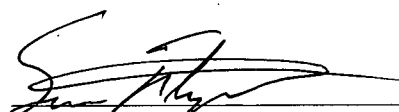
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal 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 Keiron Coleman, #359333 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 19th day of August, 2014.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of August, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022