

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Cherokee County

JUN 25 2015

Roger L. Couch, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES PRESTON BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2015-000568

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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

Whether Detective Tracy Fowler erred in testifying at appellant's trial for trafficking in methamphetamine that she was at appellant's home to execute a search warrant for being in possession of stolen property because it placed appellant's character into issue?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in methamphetamine after a jury trial held before the Honorable Roger L. Couch on March 4-5, 2015, in Cherokee County. Appellant was sentenced to seven (7) years consecutive to a probationary sentence that was revoked in full. Michael Morin, Esq. was trial counsel. Kim Leskanic, Esq. was the assistant solicitor.

This appeal follows.

ARGUMENT

Detective Tracy Fowler erred in testifying at appellant's trial for trafficking in methamphetamine that she was at appellant's home to execute a search warrant for being in possession of stolen property because it placed appellant's character into issue.

Detective Tracy Fowler was the first witness to testify at appellant's trial for trafficking in methamphetamine. She was employed by the Cherokee County Sheriff's Office for almost 19 years. She was in criminal investigations for the last 10 years. On May 23, 2014, she executed a search warrant at 161 Garvin Lake Road in Cherokee County. She explained that she was going out to the house because she worked a burglary case that happened about a week earlier. The suspect was apprehended and gave information that the stolen property that he had taken he sold to appellant at 161 Garvin Lake Road. She did not go to the residence by herself. There were other officers from criminal investigations and narcotics. (Tr. p. 87, l. 4- p. 88, l. 12) Detective Fowler said she located several items that matched the descriptions of the stolen property. The property was seized and returned to the victims of the burglary. (Tr. p. 92, l. 8- p. 93, l. 15) Appellant was never charged with having the stolen property. (Tr. p. 95, l. 2-5)

Sgt. Federico testified that he also worked for the Cherokee County Sheriff's Office. He worked in narcotics for the last three and a half years. (Tr. p. 104, l. 6-21) He helped in the search of appellant's house. (Tr. p. 111, l. 9-11) During the search they found a clear baggy with a residue of what appeared to be methamphetamine. This led to a further search and seizure of the methamphetamine for which appellant was on trial. (Tr. p. 114, l. 21- p. 123, l. 24)

It was error to mention the search warrant and search for stolen property because it placed appellant character into issue.

In Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989), the Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280, S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person.

In State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978), the Court noted: "Character evidence is so highly prejudicial that it is usually excluded under hard and fast rules." (citation omitted). In State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), the Court elaborated on the subject:

It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. See, e.g., State v. Gregory, 191 S.C. 212, 4 S.E.2d 1 (1939). Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. See, United States v. Johnson, 610 F.2d 194 (4th Cir.1979); State v. Byers, 277 S.C. 176, 284 S.E.2d 360 (1981); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Even if evidence of other crimes is deemed relevant and admissible, the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. See, State v. Wilson, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence *325 which permit the introduction of prior bad acts or crimes into evidence is the prerequisite that they establish some element, i.e., intent or motive, of the crime charged. See, e.g., State v. Lyle, supra; State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985); and State v. Huggins, 285 S.C. 361, 329 S.E.2d 759 (1985).

293 S.C. at 324-325, 360 S.E.2d at 319.

CONCLUSION

Appellant should be given a new trial.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2015.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles P. Blackwell 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 Roger L. Couch, which was held on March 5, 2015, 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 Charles P. Blackwell.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2015.

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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) Trial Transcript
- (2) Indictment

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

June 25th, 2015

Robert M. Pachak

Robert M. Pachak
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 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, 2015

Robert M. Pachak

Robert M. Pachak
Appellate Defender

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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 Charles P. Blackwell, #218728 at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 25th day of June, 2015.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of June, 2015.

Marie Hendrix (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.