

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

JUN 01 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PHILLIP HELMS,

APPELLANT

APPELLATE CASE NO. 2014-000758

ANDERS BRIEF OF APPELLANT

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¹ Counsel abandoned his 4th Amendment objection to the police search and seizure of the persons present at appellant’s home on the day in question. R.161, l. 24 – p. 162, l. 4; R.172, l. 8 – p. 173, l. 15.

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying counsel's motion per Rule 403, SCRE,² to suppress incriminating items allegedly used to produce methamphetamine seized pursuant to a search of persons present at appellant's house on the day in question because the prejudicial value of this evidence outweighed its probative value as appellant had no knowledge of what items these persons possessed and was therefore not guilty per any agreement to manufacture methamphetamine via conspiracy or accomplice liability.

² Counsel abandoned his 4th Amendment objection to the police search and seizure of persons present at appellant's home on the day in question. R.161, l. 24 – p. 162, l. 4; R.172, l. 8 – p. 173, l. 15.

STATEMENT OF CASE

Appellant Phillip Helms was convicted of manufacturing methamphetamine per jury trial held during the April 2014 term of the Aiken County General Sessions Court before Judge DeAndrea Benjamin. Appellant was sentenced to imprisonment for a period of sixteen years. Bradley M. Kirkland represented appellant at trial, and Assistant Solicitors L. McGill Bell and Michael D. Ross appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in denying counsel's motion per Rule 403, SCRE,³ to suppress incriminating items allegedly used to produce methamphetamine seized pursuant to a search of persons present at appellant's house on the day in question because the prejudicial value of this evidence outweighed its probative value as appellant had no knowledge of what items these persons possessed and was therefore not guilty per any agreement to manufacture methamphetamine via conspiracy or accomplice liability.

On June 11, 2013, several police officers arrived at appellant's home in response to information submitted to them that the manufacturing of methamphetamine had been going on there. R. 225, l. 3 – p. 227, l. 19 Appellant gave consent for the officers to look around his home on the outside and during that time a burn pile was viewed in plain sight (still smoldering), and it appeared to contain methamphetamine waste. The burn pile included the following items: starter fluid cans, battery casings, coffee filters, acid generators, a plastic bottle containing what appeared to be ammonium nitrate, lye, pseudoephedrine, and aluminum foil. R. 268, l. 25 – p. 281, l. 6; R.233, lines 4-19. After viewing the contents of the burn pile, the officers phoned in a request for a search warrant, which was immediately processed and returned to them. R. 234, l. 19 – p. 237, l. 10; R. 235, lines 2 – 11.

There were five people at appellant's home at the time the search warrant was produced: Olivia Mason, Jimmy Johnson, Renee Krantz, Robin Krantz, and Christopher Huggins. Also, there were two vehicles present at appellant's residence at the time the

³ Counsel abandoned his 4th Amendment objection to the police search and seizure of the persons present at appellant's home on the day in question. R.161, l. 24 – p. 162, l. 4; R.172, l. 8 – p. 173, l. 15.

search warrant was produced: Robin Krantz's Dodge Durango and Christopher Huggins' Red Mustang.

A search of Jimmy Johnson's pockets on June 11, 2013, revealed the existence of two Walgreens receipts for cold tablets that contained pseudoephedrine, which is used to make methamphetamines. R.237, l. 11 - p. 240, l.10.

A search of Robin Krantz revealed she had methamphetamine in her pocket and beside the tupperware that was in her purse. R. 249, l. 3 – R. 250, l. 5; R.111, lines 19-25.

A green leafy substance and coffee filters with residue were found on Christopher Huggins. App. 250, lines 8-11.

Olivia Mason was sitting on a chair at the front door of appellant's house when the search inside began. Beside Olivia Mason was a "glass smoking device, which is typically used [to smoke marijuana]." R. 230, lines 8 – 14.

A search of Renee Krantz's room inside appellant's home yielded a burned spoon and burned aluminum foil on a chalet, which the officers stated was typically used to melt and ingest meth. R. 283, l. 20 – p. 287, l. 2.

A search of the Dodge Durango that was parked on appellant's property that belonged to Robin Krantz yielded a can of Coleman fuel and coffee filters. App. 265, l. 11 – p. 268, l. 22. A search of the Red Mustang that belonged to Christopher Huggins, which appeared at appellant's residence on the day in question, yielded a coke bottle, ice compress (which contained ammonium nitrate), lithium batteries, coffee filters, crystal drain openers, and receipts for Claritin D (pseudoephedrine). R. 289, l. 19 – p. 296 l. 22; R. 257, l. 3 – p.259, l. 19.

The state's theory was that the existence of the burn pile and the items located in the burn pile together with the items found pursuant to a search of the persons and cars at appellant's home established circumstantial evidence that showed that methamphetamine was being manufactured at appellant's home. R. 157, lines 6-9.

As a result, trial counsel made a pre-trial motion to exclude the items seized from the persons and vehicles at the scene because this evidence was more prejudicial than probative due to the fact that appellant had no knowledge of the contents of these persons' pockets and cars. It was untenable and truly an imaginative stretch to charge appellant with knowledge of what these people possessed on them and in their cars; and it was error to present that evidence along with the burn pile (linking all the evidence together) as proof that he was aiding and abetting and/or conspiring to manufacture methamphetamine. Clearly, it was more prejudicial than probative to allow the jury to speculate and assign appellant with knowledge of others' possessions and speculate further that the end goal was the production of methamphetamine by appellant. R. 75, l. 14 – p. 76, l. 19; R. 156, l. 24 – p. 163, l. 3; R. 167, l. 10 – p. 168, l. 17; R. 168, l. 25 – p. 170, l. 9; R. 173, l. 16 – p. 175, l. 21.

The trial judge ruled that there was no Rule 403, SCRE, violation and that the items seized from the persons and vehicles on appellant's property was more probative than prejudicial. R. 177, l. 23 – p. 180, l. 7. At the close of the case, the trial judge charged the jury as follows:

The state must prove that the defendant was engaged in attempting to manufacture methamphetamine, and that the defendant knowingly and intentionally manufactured methamphetamine either by actually manufacturing the drug or by aiding, abetting, attempting or conspiring to manufacture the drug and that the defendant engaged in this contact[conduct] knowingly. R. 615, lines 5 – 13.

Under the theory of accomplice liability, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through same overt act; and that in order to establish that the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the state need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties. State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (2010), citing to State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App 2002) and State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). The hand of one is the hand of all means people have joined together to accomplish an illegal purpose. State v. Condrey 349 S.C. 184, 562 S.E.2d 320 (Ct. App 2002). Additionally, conspiracy is defined as the combination between an unlawful object, and the gravamen of conspiracy is an agreement, but proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy can be shown circumstantially by the conduct of the parties to the extent that there is proof that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture. State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (2005), citing to State v. Dudley, 354 S.C. 574, 581 S.E.2d 171 (Ct. App. 2003), aff'd as modified 384 S.C. 578, 614 S.E.2d 171 (2005); and State v. Buckmon, 347 S.C. 316, 323 S.E.2d 402 (2001).

Appellant explained that the burn pile they viewed was a place where he had been burning limbs. App. 227, l. 20-21. The state's position that the private possessions of others proved that appellant worked in tandem via an agreement with persons at his house to manufacture methamphetamine was not believable. To the contrary, the evidence suggested

more practically and more believably that appellant merely associated with persons who engaged in drug use because each had methamphetamine in their private possession. However, the personal drug habits or private drug possessions of these persons neither added up to nor translated into proof that appellant was engaged in some agreement with these persons to manufacture methamphetamine and this was insufficient circumstantial evidence of appellant's guilt.

Therefore, since appellant was unaware of the possessions of the persons at his home, there was no link establishing proof that he and they were manufacturing methamphetamine by agreement. Thus, the submission of the evidence at issue (items found in these persons' pockets and pocketbooks and their vehicles) was more prejudicial than probative to the extent that this allowed the jury to speculate unfairly on information that did not connect appellant to the crime charged. Hence, the jury was unduly influenced by suspicion and speculation of appellant's guilt, which probably contributed to the jury verdict of guilty as charged in appellant's case, and as a result, a Rule 403, SCRE, violation occurred in this case. In State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (Ct. App. 2014), Rule 403, SCRE, is expounded upon as follows:

Rule 403 provides that, "...relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Probative means "[t]ending to prove or disprove"...[i.e.] the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. "[T]he more essential the evidence, the greater its probative value." United States v. Stout, 509 F.3d 796, 804 (6th Cir 2007). Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.... State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct.App.2008) ("When [balancing the danger of unfair prejudice] against the probative value, the determination must

be based on the entire record and will turn on the facts of each case.” (citing State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)).

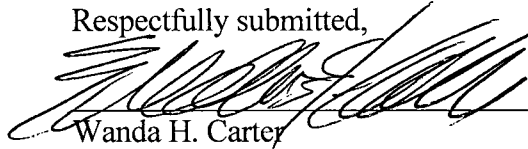
Prejudice that is “unfair” is distinguished from the legitimate impact all evidence has on the outcome of the case.” ‘Unfair prejudice...refers to evidence which tends to suggest decision on an improper basis.’ State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)). ... Rule 403 requires only the suppression of evidence that results in unfair prejudice-prejudice that damages an opponent for reasons other than its probative value.

Here, the trial judge erred in allowing into evidence items seized from the persons and cars at appellant’s home on the day in question because the prejudicial value of the same outweighed the probative value. In addition, the error was not harmless because it was likely that the error contributed to the jury’s guilty verdict. See State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013). The end result was appellant’s receipt of an unfair trial in violation of 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 case be reversed and 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 1st day of June, 2015.

STATE OF SOUTH CAROLINA
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DeAndrea G. Benjamin, Circuit Court Judge

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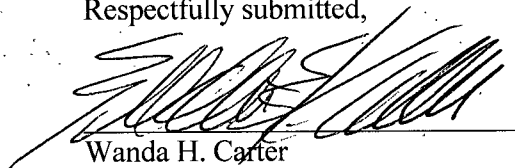
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Phillip Helms 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 DeAndrea G. Benjamin, which was held on April 2, 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 Phillip Helms.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of June, 2015.

STATE OF SOUTH CAROLINA

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Appeal from Lexington County

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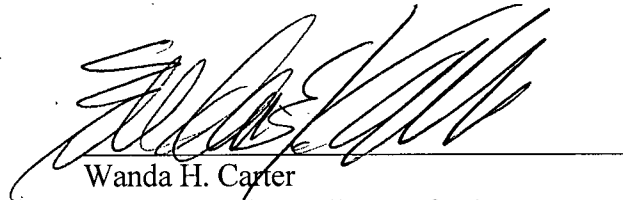
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

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

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

June 1st, 2015



Wanda H. Carter
Deputy Chief Appellate Defender

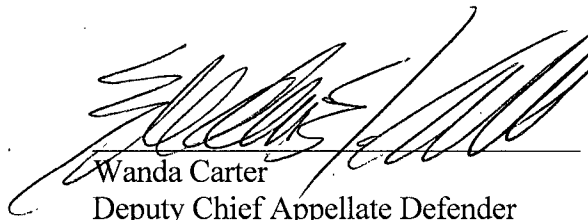
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Attorney for Appellant

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 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 1, 2015



Wanda Carter
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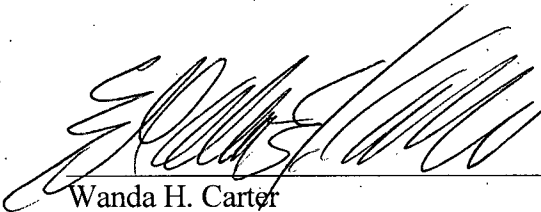
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APPELLATE CASE NO. 2014-000758

CERTIFICATE OF SERVICE

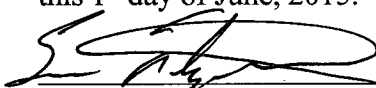
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Phillip Helms, #359447 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, 1st day of June, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of June, 2015.

 (L.S.)

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