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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

MARK A. WATSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000620

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

MARK WATSON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the judge err in not giving a curative instruction when the State made an improper closing argument appealing to the passion of the jury to convict the appellant in order to protect the community from illegal drugs?

STATEMENT OF THE CASE

In December of 2007, the Richland County Grand Jury indicted Watson for distribution of crack third offense, indictment #2007-GS-40-12278. On July 9, 2009, Watson proceeded to jury trial before the Honorable G. Thomas Cooper. The jury returned a verdict of guilty and Judge Cooper sentenced Watson to fifteen years. This appeal follows.

ARGUMENT

The judge erred in not giving a curative instruction when the State made an improper closing argument appealing to the passion of the jury to convict the appellant in order to protect the community from illegal drugs.

The jury found Watson guilty of distribution of crack cocaine. The State's evidence was based primarily on the testimony of Officer Emmitt Gilliam. Gilliam testified that he, acting undercover, purchased crack from Watson. (R. p. 81, lines 17 – p. 82, lines 1-20; p. 85, lines 12 – p. 86 – 88). The transaction was captured on audio and video tape that was admitted in evidence at trial. (R. p. 97, lines 16 – p. 98, lines 1-21). Approximately one hour after the alleged undercover purchase, Gilliam identified Watson from a photo line up. (R. p. 95, lines 1 – p. 96, lines 1-18; p. 101, lines 10-24). Seventeen months later officers sought a warrant for Watson's arrest. (R. p. 133, lines 17-23).

During closing argument the State argued:

The officers of the City of Columbia, they put their life on the line everyday to protect us, to protect them, all of us. That's what they do. Gilliam did that. He puts his life on the line to go make an undercover buy. Why? Agent Sheard puts his life on the line every day. For who? You all, including myself. We make up the community.

And we know what drugs do to our community. It breeds mischief and it breeds evil. It doesn't take a chemical analyst to tell you that. You know, you live in our communities. It breeds mischief. It breeds evil. And we've got a breeder in this courtroom today. It breeds mischief. It breeds evil. And I submit to you, here is the breeder.

(R. p. 166, lines 20 – p. 166, lines 1-8).

The State's closing argument was improper. The judge erred in failing to provide the jury with a curative instruction in regard to the State's improper closing argument.

A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). The argument must not be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn there from. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). In State v. Liberte, 336 S.C. 648, 654, 521 S.E.2d 744, 747 (Ct. App. 1999), the South Carolina Court of Appeals wrote:

A prosecutor may not urge jurors to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted for reasons wholly irrelevant to his own guilt or innocence. Jurors may be persuaded by such appeals to believe that, by convicting a defendant, they will assist in the solution of some pressing social problem. The amelioration of society's woes is far too heavy a burden for the individual criminal defendant to bear. United States v. Monaghan, 741 F.2d 1434, 1441 (D.C.Cir.1984), cert. denied, 470 U.S. 1085, 105 S.Ct. 1847, 85 L.Ed.2d 146 (1985); see also United States v. Hawkins, 595 F.2d 751, 754 (D.C.Cir. 1978) (Prosecutors are not "at liberty to substitute emotion for evidence by equating, directly or by innuendo, a verdict of guilty to a blow against the drug problem."), cert. denied, 441 U.S. 910, 99 S.Ct. 2005, 60 L.Ed.2d 380 (1979); United States v. Barker, 553 F.2d 1013, 1025 (6th Cir. 1977) ("[I]t is beyond the bounds of propriety for a prosecutor to suggest that unless this defendant is convicted it will be impossible to maintain 'law and order' in the jurors' community; United States v. Radka, 904 F.2d 357, 361 (6th Cir. 1990) ("Despite the devastation wrought by drug trafficking in communities nationwide, we cannot suspend the precious rights guaranteed by the Constitution in an effort to fight the 'War on Drugs.' "). (Some internal citations omitted).

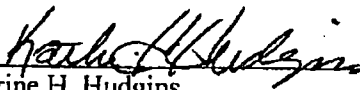
The State's closing argument was improper because it appealed to the passions of the jury to convict the defendant in order to protect the community from illegal drugs. An

improper closing argument requires reversal when the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 cert. denied, 522 U.S. 853, 118 S.Ct. 146, 139 L.Ed.2d 92 (1997). The State's argument asking the jury to convict the defendant in order to protect the community from illegal drugs constitutes a denial of due process requiring reversal. The judge erred in failing to give a curative instruction.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of September, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK WATSON,

APPELLANT


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mark Watson states:

1. She is 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 G. Thomas Cooper, which was held on July 9, 2009, 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 Mark Watson.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

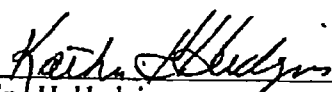
ATTORNEY FOR APPELLANT:

This 9th day of September, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant 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."

September 9, 2010


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

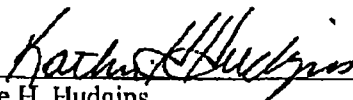
v.

MARK WATSON,

APPELLANT

CERTIFICATE OF SERVICE

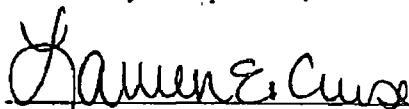
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Mark Watson, #00306011 at Kirkland Correctional Institution, this 9th day of September, 2010.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of September, 2010.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 23, 2014.

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The South Carolina Court of Appeals **RECEIVED**

JUL 13 2011

The State, Respondent
v.
Mark A. Watson, Appellant.

ATTORNEY GENERALS
OFFICE

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2007-GS-40-12278

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for Richland County.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina

Original to: The Honorable Jeanette W. McBride
cc: Appellate Defender Kathrine H. Hudgins
Mark A. Watson #306011
Assistant Deputy Attorney General Sally W. Elliot

FILED
2/12/11