

46

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED

MAR 30 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TAIWAN J. HARDY,

APPELLANT

APPELLATE CASE NO. 2015-001671

ANDERS BRIEF OF APPELLANT

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

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

State v. Monzon, 321 S.C. 27, 467 S.E.2d 122 (1996)..... 7

State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998) 8

Faretta v. California, 422 U.S. 806 (1975)8

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in coercing appellant in effect to withdraw defense exhibit #1, which was a prior controlled drug purchase agreement signed by the confidential informant used in this case, in order to secure the last closing argument to the jury because this exhibit was corroborative evidence that established the unreliableness of this informant deemed critical to appellant's defense.

STATEMENT OF THE CASE

Appellant Taiwan Jevon Hardy was convicted of distribution of crack cocaine per a jury trial held during the July 2015 term of the Spartanburg County General Sessions Court before Judge Roger L. Couch, and sentenced to life imprisonment. William Bean represented appellant at trial, and Assistant Solicitors Hunter Blouin and Edward Hunter appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows

ARGUMENT

The trial judge erred in coercing appellant in effect to withdraw defense exhibit #1, which was a prior controlled drug purchase agreement signed by the confidential informant used in this case and police, in order to secure the last closing argument to the jury because this exhibit was corroborative evidence that established the unreliableness of this informant deemed critical to appellant's defense.

In the instant case, confidential informant Brandy Cannon claimed she went to hotel room #127 at the Traveler's Inn in Spartanburg County on March 10, 2014, and purchased crack cocaine from appellant per her agreement with police to do so. R. 60, l. 8 – 9; R. 60, l. 8 – 9; R. 62, lines 2 – R. 63, l. 11. Cannon testified that she “went in...spoke to appellant....gave him the twenty dollars.....and [that afterwards] he gave me....[the] crack,” and that then Officer Travis McJunkin gave her \$50.00. R. 66, l. 5 – 7; R. 69, l. 20 – 24. Police Officer Travis McJunkin testified that he contacted confidential informant Brandy Cannon and set up the controlled drug buy involving the crack cocaine purchase from appellant on the date in question. R. 99, l. 23 – p. 100, l. 18.

Appellant's defense was that Cannon was a lying, crack addict who had a long history of “working off” charges for her gain and therefore lacked credibility, which meant that she was an unreliable informant whose testimony about this alleged drug sale involving appellant could not be believed, and that there was reasonable doubt as to whether the alleged drug sale involving appellant actually occurred. For example, Cannon testified that she had been a crack cocaine addict for over a decade and frequently used drugs (crack cocaine) with and in the company of appellant. Cannon added that doing drugs was how she met appellant. R. 59, l. 19 – p. 60, l. 12; R. 61, lines 14 – 21. Also, Cannon admitted

that she cooperated with police and made many controlled buys (over 300) in the past to “work off” some of her drug charges, and that she received pay offs of up to \$200.00 for making these drug purchases. R. 80, l. 5 – p. 81, l. 25. However, despite the fact that Cannon was paid \$50.00 for the instant drug buy allegedly involving appellant, she declared that she was not working off charges in this instance, but rather made the present drug purchase from appellant as “a favor” to Officer McJunkin. R. 57, lines 16 – 25; R. 90, l. 13 – 18; R. 92, lines 6 – 8.

Clearly, Cannon was an unreliable informant whose drug addiction, drug history, and drug purchases to “work off charges” meant that she was not a credible and reliable informant and that her gain, either in the form of payment in money or payment in “working off” her charges, was all that was paramount; and therefore, reasonable doubt existed as to whether she actually purchased crack cocaine from appellant as alleged on the date in question or lied to receive \$50.00.

Appellant sought to corroborate his position regarding Cannon’s lack of credibility and unreliableness by introducing into evidence defense exhibit #1 while cross examining Cannon. Defense exhibit #1 was a prior agreement signed by Cannon to make a controlled drug purchase presented in order to demonstrate that Cannon lacked integrity and that her desire to strike a deal with police to work off charges or to get paid always constituted her only concern. R. 77, l. 15 – p. 81, l. 25.

At the close of the case, defense counsel requested the last closing argument per the following rationale:

Defense counsel: Your Honor, I would ask that the State open on the law, but it’s my understanding that if I introduce evidence on cross examination of a State’s witness, that doesn’t constitute the admission of evidence on my part,

which would cause me...in other cases, and it's never come up. I have done it a few times just similar to this and have always gotten the last argument.

The Court: Well, no, the Battle case stands for the proposition that the judge does have the authority to, in his discretion, to allow the withdrawal of the evidence...so that's not what's – that's not the issue in front of me right now because you haven't made a motion to withdraw the evidence at this point.

Defense Counsel: I'm fixing to [do so]. R. 142, lines 21-25; R. 145, l. 8 – p. 146, l. 3.

Thereafter, appellant withdrew defense exhibit #1 in order to secure the last closing argument to the jury. R. 147, l. 20 – R. 149, l. 5. Defense exhibit #1 was marked as a court exhibit instead. The trial judge stated that defense exhibit #1, which was ultimately substituted as a court's exhibit, would “not go to the jury.” R. 149, l. 4 – 8.

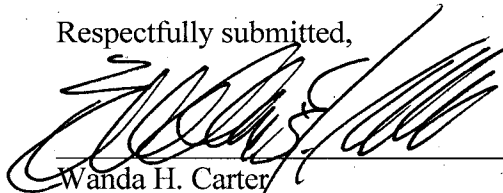
If the defendant calls no witnesses and offers no evidence, then his counsel has the right to have the concluding argument to the jury. State v. Monzon, 321 S.C. 27, 467 S.E.2d 122 (1996). In Monzon, the court held that viewing the crime scene upon the defendant's request did not constitute evidence and that he was entitled to present the last argument at closing. Appellant's defense argument at closing was that the state offered insufficient evidence of proof beyond a reasonable doubt that appellant sold crack cocaine to the informant because said informant made buys for her benefit and best interest only, which meant that her integrity and reliability were questionable and that her testimony could not be believed, (she'll say anything), and hence reasonable doubt was established as to appellant's guilt on the drug charge submitted against him. R. 159, l. 7 – R. 164, l. 5. Apparently, the video shows no exchange of money.

Defense exhibit #1, which became a court's exhibit that was unavailable for the jury's perusal, would have corroborated appellant's theory of the case. This exhibit was one of Cannon's many prior drug agreements presented as proof that Cannon was an unreliable informant who would lie to strike a deal and save herself and that her testimony about the drug sale involving appellant was not credible testimony. Corroborating evidence is defined as evidence supplementary to that already given and tending to strengthen or confirm it. State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). Appellant was denied his right to fully present his defense¹ because he had to withdraw defense exhibit #1 so as not to lose his last closing argument in the case. The agreement should have been read into evidence in order to allow for the jury's review of the evidence without appellant's loss of his last closing argument.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the lower court for a new trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2016.

¹ Faretta v. California, 422 U.S. 806 (1975).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAIWAN HARDY,

APPELLANT

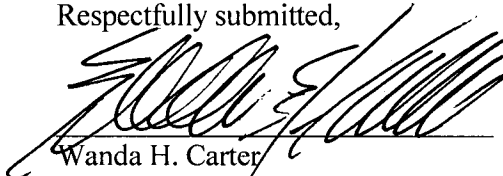
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Taiwan Hardy 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 Roger L. Couch, which was held on July 23, 2015, 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 Taiwan Hardy.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAIWAN HARDY,

APPELLANT

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

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

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

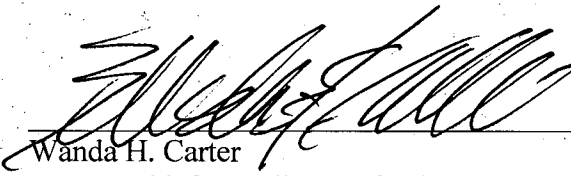
RECEIVED

MAR 30 2016

SC Court of Appeals

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

March 30th, 2016



Wanda H. Carter
Deputy Chief Appellate Defender

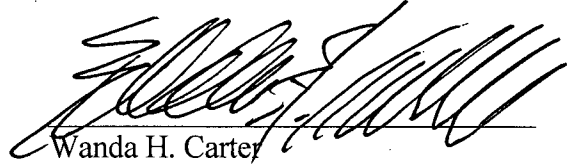
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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."

March 30, 2016



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

MAR 30 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

V.

TAIWAN HARDY,

RECEIVED

MAR 30 2016

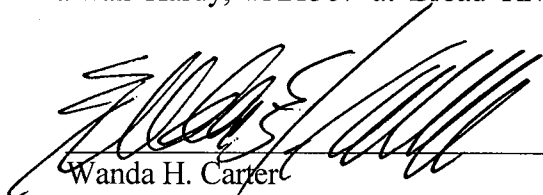
SC Court of Appeals

RESPONDENT,

APPELLANT

CERTIFICATE OF SERVICE

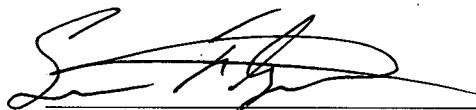
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Taiwan Hardy, #321387 at Broad River Correctional Institution, this 30th day of March, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 30th day of March, 2016.

 (L.S.)

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

RECEIVED

MAR 30 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

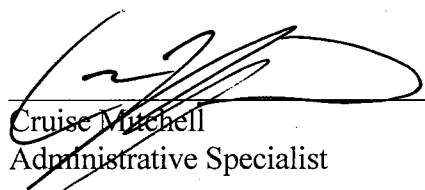
WAYMON EUGENE NEWTON,

APPELLANT

APPELLATE CASE NO. 2015-001399

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 30th day of March, 2016 .


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 30th day of March, 2016 .

Marie Munder (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.