

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

RECEIVED

DEC 28 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIE CLARENCE PITTS,

APPELLANT

APPELLATE CASE NO 2016-000423

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by not allowing Appellant to impeach a witness on the grounds that his failure to register as a sex offender constituted a crime of dishonesty?

STATEMENT OF THE CASE

Detective Tyrone Goggins with the Laurens Police Department utilized the services of a confidential informant, James Miller, to purchase drugs in exchange for money. Tr. 42 ll. 3 – 13. On April 16, 2014, Miller allegedly purchased crack cocaine from Appellant. Tr. 43 l. 16 – Tr. 43 l. 24. After the alleged transaction took place, Miller met with law enforcement and provided them with the crack cocaine which he had acquired. Tr. 45 l. 19 – Tr. 46 l. 14. He was paid fifty dollars for his work. Tr. 46 l. 1 – 14. Appellant was subsequently arrested by a member of Goggins' team.

On August 29, 2014, Appellant was indicted by the Laurens County Grand Jury for distribution of crack cocaine and distribution of crack cocaine within the proximity of a public park. R. 146 – 151. On February 16, 2016, Appellant proceeded to a two-day trial before the Honorable Frank Addy. Aaron Taylor represented Appellant. Margaret Boykin and Dale Scott represented the State.

In order to impeach the credibility of the State's confidential informant, Miller, Counsel for Appellant sought to cross-examine him on his conviction for failure to register as a sex offender. Tr. 14 l. 21 – Tr. 15 l. 5. The trial judge denied Appellant's request, and Miller was not impeached on that charge. Tr. 17 ll. 23 – 25.

Following a guilty verdict, Judge Addy sentenced Appellant to seventeen year' imprisonment on the charge of distribution of cocaine and ten years' imprisonment for the charge of distribution of crack cocaine within the proximity of a public park. Tr. 114 ll. 1 – 11.

ARGUMENT

The trial court abused its discretion by failing to allow Appellant to impeach a witness on the grounds that his failure to register as a sex offender constituted a crime of dishonesty.

As counsel for Appellant articulated, failure to register as a sex offender constitutes a crime of dishonesty. Tr. 14 l. 21 – Tr. 15 l. 5. Appellant should have been able to cross-examine Miller and/or impeach his credibility based upon the conviction of such a crime. Before interpreting the statutory provision regarding Miller’s conviction, the trial judge remarked “[w]ell, if he was required to register and he did not register - - there really is no excuse for not registering.” App. 16 ll. 6 – 8. Nonetheless, the trial judge distinguished S.C. Code Ann. § 23-3-470 of which Miller was convicted from § 23-3-475 which contains an element of dishonesty.¹ As a result, counsel for Appellant was prevented from cross-examining Miller about his failure to register as a sex offender. However, a conviction under S.C. Code Ann. § 23-3-470 constitutes a crime involving dishonesty, and Appellant should have been able to attack the credibility of the State’s confidential informant under SCRE 609.

The credibility of a witness may be attacked by any party, including the party calling the witness. SCRE 607. “For the purpose of attacking the credibility of a witness, evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” SCRE 609.

If a crime is viewed as one involving dishonesty, a trial court must admit a prior conviction thereof for purposes of impeachment, because prior convictions involving dishonesty

¹ Counsel for Appellant and the trial judge refer to Title 24 of the South Carolina Code, but upon information and belief, they were reading from and discussing Title 23.

or false statement must be admitted regardless of their probative value or prejudicial effect. *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006).

For impeachment purposes, crimes of “dishonesty or false statement” are crimes in the nature of *crimen falsi* “that bear upon a witness's propensity to testify truthfully.” *Adams v. State*, 284 Ga.App. 534, 644 S.E.2d 426, 431–32 (2007) (footnote omitted) (surveying federal and state treatment of the issue, and adopting the more narrow federal definition); *see also United States v. Smith*, 551 F.2d 348, 362–63 (D.C.Cir.1976) (“[I]n its broadest sense, the term ‘*crimen falsi*’ has encompassed only those crimes characterized by an element of deceit or deliberate interference with a court's ascertainment of truth.” (emphasis added)). *State v. Broadnax*, 414 S.C. 468, 476, 779 S.E.2d 789, 793 (2015), *reh'g granted* (Sept. 8, 2015).

The Federal Rules of Evidence specifically identify *crimena falsi* in Rule 609(a)(2), FRE, as crimes which by their very nature permit the impeachment of a witness convicted of a crime of “dishonesty or false statement.” Although South Carolina did not adopt this explanatory language when it adopted Federal Rule 609, the notion of *crimen falsi* in the evidentiary context is long-established in the common law of South Carolina. *See, e.g., State v. Peterson*, 35 S.C. 279, 282, 14 S.E. 617, 618 (1892) (“The old, well-settled rule was that one who had been convicted of a crime belonging to the class known as the ‘*crimen falsi*’ was said to be infamous, and incompetent to testify.”).

South Carolina’s statutory provisions regarding the failure to register as a sex offender can be found at S.C. Code Ann. §23-3-470:

It is the duty of the offender to contact the sheriff in order to register, provide notification of change of permanent or temporary address, or notification of change of employment, or in attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university,

and any vocational, technical, or occupational school. If an offender fails to register, provide notification of change of address, or notification of permanent or temporary change in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, as required by this article, he must be punished as provided in subsection (B).

S.C. Code Ann. §23-3-470(A).

By focusing only on the fact that S.C. Code Ann. §23-3-475 requires an element of dishonesty whereas §23-3-470 does not explicitly entail that language, the trial court overlooked the registration requirements that were imposed on convicted sex offenders. Failing to register constituted deceit and untruthfulness; according to the registry, Miller would either have been listed at the wrong address or not listed at all. Either instance results in the dissemination of inaccurate information. Dishonesty in the form of deception or false statements could have been present in this failure to register case. Counsel for Appellant should have been allowed to cross-examine Miller about his failure to register as a sex offender.

The requirement - registration with the sheriff - was limited to sex offenders. The registration scheme regulated many sex offenders by requiring them to avail themselves of existing registration systems, and the criminal provisions for failure to register for a third or subsequent offense constituted a felony. S.C Code Ann. § 23-3-470(B)(2). Miller testified that he was smoking crack in April 2014 at the time of the alleged transaction involving Appellant. Tr. 55 ll. 17 – 18. He testified that he had been taking drugs for a long time. Tr. 55 ll. 19 – 22. Because Miller did not want to be tracked or apprehended for this wrongdoing, he failed to comply with the registration system. Attempting to avoid the legislative purpose of the sex offender registry—to keep track of known sex offenders—constitutes an element of deceit and stealth which goes to Miller’s character for truth and honesty.

Miller's involvement as the confidential informant was the backbone of the State's case. Appellant should have been allowed to cross-examine Miller regarding his conviction for failure to register as a sex offender, because by neglecting to register, Miller provided outdated and/or inaccurate information to law enforcement. He was less than truthful, and his failure to comply with the statutory registration requirements should have been discussed in order to allow the jury to judge his credibility.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court reverse Appellant's conviction and remand his case for a new trial.

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIE CLARENCE PITTS,

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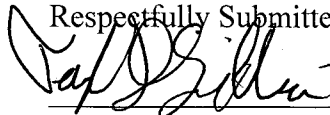
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Willie Clarence Pitts 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 Frank R. Addy, which was held on February 16 - 17, 2016, 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 Willie Clarence Pitts.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2016.

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Honorable Frank R. Addy, Circuit Court Judge

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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.

December 28, 2016



Taylor D Gilliam
Appellate Defender

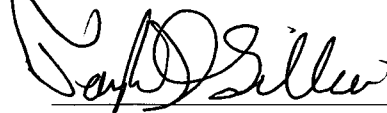
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ATTORNEY FOR APPELLANT

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."

December 28, 2016.



Taylor D Gilliam
Appellate Defender

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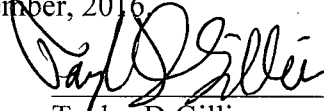
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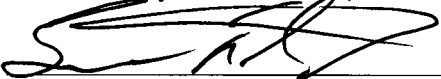
CERTIFICATE OF SERVICE

The undersigned 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 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 have been served on Willie Clarence Pitts, #271483, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 28th day of December, 2016.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of December, 2016.



(L.S)

Notary Public for South Carolina
My Commission Expires: 10/30/2022.