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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable John C. Hayes, Circuit Court Judge

**ORIGINAL
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OCT 12 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEVEN E. JENNINGS,

APPELLANT

APPELLATE CASE NO. 2015-002598

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT	
The trial court erred in denying Appellant's motion for a directed verdict when there was no substantial credible evidence that he was distributing methamphetamine except a co-defendant who owned the vehicle where the methamphetamine was found.....	3
CONCLUSION.....	9
PETITION TO BE RELIEVED AS COUNSEL	10

TABLE OF AUTHORITIES

Cases

<u>State v. Arnold</u> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	7
<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	7
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004).....	7
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005).....	7
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011)	7

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for a directed verdict when there was no substantial credible evidence that he was distributing methamphetamine except a co-defendant who owned the vehicle where the methamphetamine was found?

STATEMENT OF THE CASE

On February 10, 2015, the Pickens County Grand Jury indicted Steven Jennings on the charge of possession with intent to distribute methamphetamine. (PWID). On September 30 – October 1, 2015, a trial was held in Jennings' absence before the Honorable John C. Hayes. Jennings was represented by John W. DeJong, and the state was represented by Baker Cleveland.

R. 1. The jury found Jennings guilty of the lesser included offense of simple possession of methamphetamine. R. 209, l. 6 – 23. Judge sealed the sentence and issued a bench warrant for Jennings. R. 213, ll. 11 – 25.

On December 16, 2015, Jennings appeared before the Honorable Letitia H. Verdin for sentencing. Judge Verdin opened the sealed sentence which was three years. December 16, 2015 R. 4, ll. 1 – 24.

Jennings filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant's motion for a directed verdict when there was no substantial credible evidence that he was distributing methamphetamine except a co-defendant who owned the vehicle where the methamphetamine was found.

On July 20, 2014, Officer Tye Nalley had gone to Walmart to shop as he was off-duty. He saw the manager, Don Meredith whom he knew from his work as a police officer, following some people trying to get them to stop. Meredith asked Officer Nalley to assist him. Officer Nalley, along with Meredith, followed the subjects to their car. Officer Nalley stood in front of the car to prevent them from leaving. When he did, one of the people, a woman who was a backseat passenger, ran from the vehicle. He learned her name was Michelle Millwood. R. 64, ll. 6 – R. 66, ll. 24.

Meredith had called the police who arrived and took over the case. R. 66, ll. 9 – 12.

Officer Nalley said there were four people in the car. When Millwood ran, the other three—two men and another woman—remained in the car. R. 66, ll. 16 – R. 67, ll. 16; R. 70, ll. 13 – 18. Meredith believed the people had shoplifted some items from the store. R. 69, ll. 3 – 13.

On cross examination, Officer Nalley clarified that one of the four people was involved in stealing the items but it was not Jennings. Jennings was with the person who was stealing. R. 69, ll. 16 – 24. The two women were Michelle Millwood and Bridgett Crawford who was driving. The two men were John Parker Brewer and Jennings. R. 70, ll. 13 – R. 71, ll. 2. Bridgett Crawford was driving, and Michelle Millwood was the left seat passenger behind the driver. He did not remember the seating of the men. R. 71, ll. 10 – R. 72, ll. 25.

Officer Brian Smith had responded to the call which was for shoplifting. The three subjects, including Jennings, presented the officer with positive identifications. R. 76, ll. 1 – R.

77, ll. 24. He learned that Bridgett Crawford was the owner of the vehicle. She provided consent to Officer Smith to search the vehicle which he did as he was investigating the shoplifting. R. 78, ll. 19 – 79, ll. 25.

As he searched the vehicle, Officer Smith found several clothing items shoved under the driver's seat from the back. He found a bag in the back floorboard behind the driver's seat as well. He thought it may be involved in the shoplifting or an item that had been taken, so he opened it. There were three uncapped needles and one that was capped that had a liquid in it in the bag. There was a purple polka dotted bag on the back seat that had a small clear package with a crystal substance that he believed to be methamphetamine based on his training. R. 80, ll. 1 – 25. The bag with the needles was lying in the middle of the floor board where the passenger's feet would go in the back behind the driver. It was partially covered by the clothing. R. 92, ll. 6 – R. 93, ll. 5. The bag was pink and had the point of a needle sticking put through the bag. R. 96, ll. 9 – R. 97, ll. 24. Officer Smith confirmed that the pink bag with the needles was found behind the driver's seat where Michelle Millwood was sitting. R. 98, ll. 7 – 17.

Jennings told the officer that he was sitting in the back seat behind the passenger. R. 81, ll. 17 – 25.

The officer continued to search the car and found in the glove box a pack of black Marlboro cigarettes that had a clear package of crystal type substance between the cigarette pack and the cellophane. He again believed the substance to be methamphetamine. R. 82, ll. 1 – R. 83, ll. 18. All three people denied ownership of the drugs found, so all three subjects were arrested. R. 85, ll. 7 – R. 86, 18.

The officer said that Jennings was not charged with shoplifting but was charged with possession with intent to distribute methamphetamine (PWID). R. 97, ll. 24 – R. 98, ll. 25. The

officer admitted that there were no bags found where Jennings was sitting. Both the pink bag and the polka dotted bag were found behind the driver's seat where Michelle Millwood was sitting. R. 99, ll. 1 – R. 100, ll. 16.

Bridgett Crawford testified for the state. She testified that Millwood and Jennings lived together and John Bowen was Bridgett's boyfriend at the time. The four of them had been at her house all weekend using methamphetamine. She claimed that Millwood and Jennings put the methamphetamine in her car. R. 134, ll. 1 – R. 135, ll. 24; R. 137, ll. 15 – 19.

They ran out of the drug on Sunday so Bridgett Crawford called a friend who could provide more methamphetamine. Jennings had new cellphones that he traded for more methamphetamine which he gave to Michelle Millwood. Crawford and Bower did not get more drugs. R. 136, ll. 5 – R. 137, ll. 23.

They were at Walmart because Bridgett was taking Millwood and Jennings back to their home in Pelzer and they needed to stop by Walmart. She went into the store alone as Bower stayed in the car. Jennings and Millwood went in together. Bower called her to come back to the car. When she did, she saw the police and Jennings and Millwood there. They all got into the car. As she pulled off, the plainclothes policeman got in front of the car and pulled out his badge. Bridgett stopped the car and Michelle Millwood jumped from the car and ran. R. 138, ll. 1 – R. 139, ll. 25.

Then the uniformed policeman arrived. Bridgett consented to the search of her car because she thought Millwood had taken the drugs with her when she ran. Bridgett denied knowing there drugs in the glove compartment. She had no knowledge there were drugs in her car. R. 140, ll. 24 – R. 142, ll. 3.

Bridgett testified that John bower was in the front passenger seat, and Jennings was in the back passenger seat behind Bower. Michelle Millwood was sitting in the passenger seat behind Bridgett, the driver. R. 142, ll. 4 – R. 143, ll. 10.

Bridgett Crawford was charged with PWID methamphetamine. She pled guilty because she was in the car with the people who had the drugs. Bridgett received a year's house arrest and one year probation. She affirmed that the methamphetamine and needles belonged to Michelle Millwood and Steve Jennings. She did not know who the drugs in the glove box belonged to. R. 143, ll. 16 –R. 144, ll. 25.

After the state rested, defense counsel moved for a directed verdict. Counsel argued that there was “no substantial credible evidence” as the only evidence against Jennings was the testimony of Bridgett Crawford who was a “fellow meth smoker and user.” The judge denied the motion as he ruled that it went to the “credibility of the witnesses” before the jury. R. 159, ll. 8 – R. 160, ll. 22.

The jury found Jennings guilty of the lesser included offense of “simple possession of methamphetamine.” R. 209, ll. 7 – 23. The judge wrote the sentence and sealed the envelope. He issued a bench warrant for Jennings. R. 213, ll. 8 – 25.

On December 16, 2015, Jennings appeared before the Honorable Letitia H. Verdin for sentencing. He had been picked up on the bench warrant fourteen days earlier. Judge Verdin opened the sentence sealed by Judge Hayes. Judge Verdin announced that the sentence of the court was three years. December 16, 2015 R. 4, ll. 1 – 25.

On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion

that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error. State v. Arnold, *supra*. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

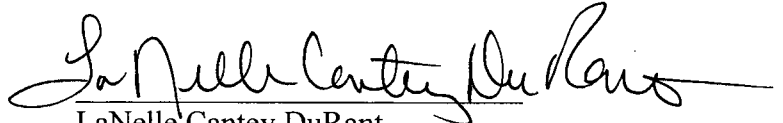
In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held that the state presented insufficient evidence to submit the murder charge to the jury. The Court held that the trial court should have granted a directed verdict because the state's evidence only raised a "suspicion of guilt." Bostick was charged with the murder of his neighbor, who was an older woman. The evidence against Bostick consisted of items (car keys, calculator) belonging to the victim which were found in the Bostick family's burn pile; the fire accelerant in the burn pile was one not used by Bostick's mother; Bostick had a pattern on his shoes that matched the accelerant which was gasoline; the blood found on Bostick's jeans did not match the victim's.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court held that the circumstantial evidence did not tend to prove the defendant's guilt, and the defendant was entitled to a directed verdict because the state failed to produce evidence of the offense charged. The evidence against Odems consisted of his location in the getaway car in this burglary case ninety minutes after the burglary; the defendant fled from law enforcement; and Odems asked an uninvolved person to lie for him to the police.

The trial judge erred in not granting a directed verdict to Jennings. There was not substantial evidence to submit his case to the jury. He was not in possession of the methamphetamine and was not sitting in the seat in the car where the drugs were found. The jury's decision showed support for a directed verdict on the PWID.

CONCLUSION

Based on the above, the conviction and sentence should be vacated, and the case remanded for the entry of a directed verdict.

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is fluid and cursive, with a long horizontal line extending from the end.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of October, 2016.

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Honorable John C. Hayes, Circuit Court Judge

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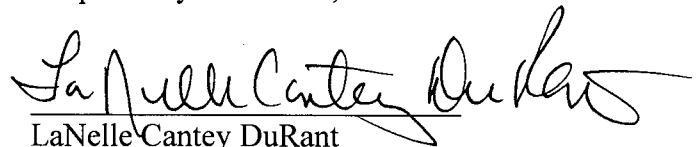
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steven E. Jennings states:

1. She is an 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 John C. Hayes, which was held on December 16, 2015 (Sentencing), 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 Steven E. Jennings.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable John C. Hayes, Circuit Court Judge

THE STATE,

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DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

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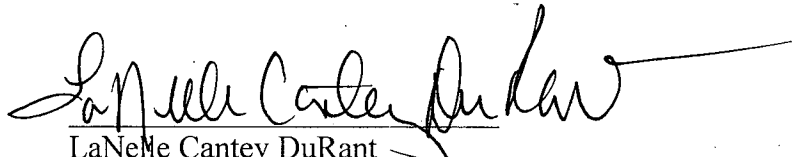
SC Court of Appeals

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

- (1) True-billed indictment(s):
- (2) September 30-October 1, 2015 Transcript
- (3) December 16, 2015 Transcript.
- (4) Sentencing Sheet

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

October 12, 2016


LaNelle Cantey DuRant
Appellate Defender

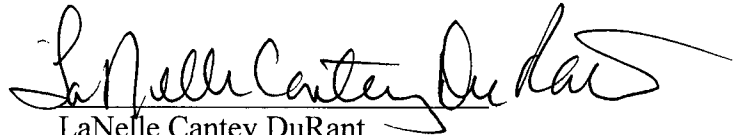
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ATTORNEY FOR APPELLANT

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."

October 12, 2016.



LaNelle Cantey DuRant
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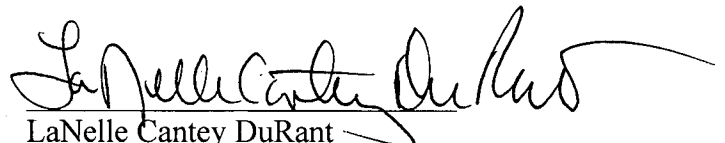
V.

STEVEN E. JENNINGS,

APPELLANT

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 Steven E. Jennings, 366465, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 12th day of October, 2016.

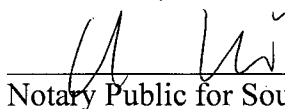


LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of October, 2016.

 (L.S)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.