

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

SFP 22 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYLER SHIGGS,

APPELLANT

APPELLATE CASE NO. 2016-000467

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying the motion for a directed verdict when the date of the alleged drug buy came into question?

STATEMENT OF THE CASE

Appellant was convicted of distribution of cocaine and distribution of the same within proximity of a school after a jury trial held before the Honorable Doyet A. Early, III on February 23, 2016, in Barnwell County. Respective sentences of twelve (12) years and ten (10) years were imposed. Jason M. Price, Esquire was defense counsel. Ashley A. Hammock, Esquire, Jack W. Hammack, Esquire, and David W. Miller, Esquire were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in denying the motion for a directed verdict because the date of the alleged drug buy came into question.

The indictments charging appellant with drug crimes alleged the following:

That Tyler Shiggs did in Barnwell County on or about January 14, 2015, knowingly or intentionally distribute a quantity of cocaine, a controlled substance under provisions of §44-53-110. Et. Seq., Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law.

That Tyler Shiggs did in Barnwell County on or about January 14, 2015, knowingly or intentionally distribute cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public vocational or trade school or a technical education center; or a public or private college or university, to wit: Barnwell Primary School, such distribution not having been authorized by law.

At trial Joseph Hair the informant testified that he purchased cocaine from appellant on January 14, 2015, at appellant's house in Barnwell. (R. p. 38, l. 14 – p. 39, l. 21)

Officer Rodney Brown with the sheriff's office testified that he put the drugs that were purchased from appellant in a BEST kit, sealed it, and sent it off for drug analysis. The date on the BEST kit was January 13, 2015. (R. p. 63, l. 15 – p. 65, l. 9) The discrepancy between when the drugs were allegedly bought and when the drugs were allegedly bought and when they were

put in the BEST kit should have warranted a directed verdict on the drug charges. The trial court's denial of a directed verdict constituted error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

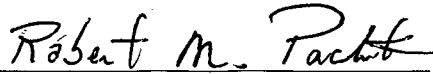
In applying this standard, our Court has held that evidence which is "sufficient to raise a strong suspicion of the guilt of the accused" is not sufficient to constitute "any evidence form which the guilt of the accused may be fairly and logically deduced." State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, "where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused's guilt." State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). "If the evidence is consistent with both innocence and guilt it cannot support a

conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case the State failed to prove the actual date that appellant allegedly sold the drugs.

CONCLUSION

A directed verdict should be granted in appellant's favor.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of September, 2016.

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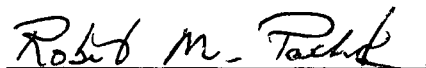
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyler Shiggs 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 Doyet A. Early, which was held on February 23, 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 Tyler Shiggs.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

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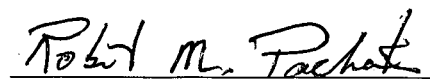
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript Dated February 23, 2016:
- (2) True-billed Indictments and Sentence Sheets

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

September 22, 2016



Robert M. Pachak
Appellate Defender

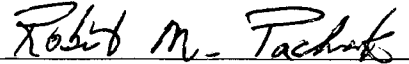
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ATTORNEY FOR APPELLANT

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."

September 22, 2016.



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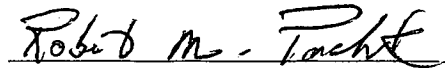
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APPELLATE CASE NO. 2016-000467

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 Tyler Shiggs, #367221, at Walden Correctional Institution, 4340 Broad River Road, Columbia, SC 29210, this 22nd day of September, 2016.



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of September, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: March 1, 2026