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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN WILLIAM DOBBINS, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002134

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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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 err in failing to direct a verdict of not guilty on the charge of unlawful disposal of methamphetamine waste where the only evidence that the State adduced was that a plastic bottle purportedly used in making methamphetamine was located in a household trashcan inside of Appellant's camper?

STATEMENT OF THE CASE

On February 24, 2012, the Laurens County Grand Jury indicted Appellant John William Dobbins, Jr. on counts of manufacturing methamphetamine, possession with intent to distribute methamphetamine, and unlawful disposal of methamphetamine waste, as well as two counts of possession of a controlled substance. R. 329-338. On September 9, 2013, Appellant appeared at trial before The Honorable Donald B. Hocker and a jury. Rauch Wise represented Appellant and Ruston Neely and Dale Scott represented the State. R. 1.

At the conclusion on the trial on September 11, 2012, the jury found Appellant guilty on all counts. R. 1; R. 310, lines 3-21. Judge Hocker sentenced Appellant to concurrent sentences of twenty-five years for the methamphetamine manufacturing and possession charges, five years for the disposal charge, and one year each for the possession of controlled substance charges. R. 326, line 15—R. 327, line 4.

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT OF NOT GUILTY BECAUSE NO PROBATIVE EVIDENCE SHOWED APPELLANT ABANDONED THE BOTTLE OR STORED IT INDEFINITELY.

STATEMENT OF FACTS

At trial the State alleged that on November 24, 2011, officers from the Laurens County Sheriff's Office were investigating a domestic dispute at a home in the town of Waterloo. At around 3:00 a.m., searching for the dispute's aggressor, Shayla Gaines, the officers visited a camper home in which she purportedly resided. Claiming to notice the smell of cooking methamphetamine, the officers knocked on the door. Appellant briefly opened the door and shut it. The officers forcibly entered and found inside a "meth lab" and methamphetamine. R. 77, line 23—R. 82, line 3.

The State called the officers to testify that inside the residence they found baggies containing a white powdery substance that field tested as methamphetamine, pill bottles, scales, and materials purportedly used for producing methamphetamine. R. 86, line 23—R. 96, line 25; R. 116, line 3—R. 145, line 20. Officer Matthew Veal briefly described a method typically used to produce methamphetamine using the materials found in the camper. First, various chemical ingredients are combined in a plastic bottle, and chemical reactions create a liquid containing new chemical compounds in the bottle. Other ingredients are also combined in a twenty-ounce plastic bottle to create a chemical gas, which is kept trapped inside the bottle. Using tubing, the gas is then squeezed from the twenty-ounce bottle so it passes through the liquid chemicals in the other bottle, and the interaction precipitates methamphetamine particles that sink to the bottom of the liquid. R. 127, line 19—R. 131, line 7. Officer Veal gave testimony alongside photographic evidence

that a twenty-ounce plastic bottle with tubing extending from the top was located in a “household trash can” inside the camper. R. 128, lines 8-15.

Appellant moved for a directed verdict of not guilty on the charge of unlawful disposal of methamphetamine waste. He argued that the presence of the plastic bottle in the trash can inside the camper was not legally sufficient evidence to support a conviction under the statute. R. 242, lines 9-23. The trial judge denied the motion. App. 247, lines 2-7.

DISCUSSION

The trial court erred in failing to direct a verdict of not guilty because no probative evidence showed appellant abandoned the bottle or stored it indefinitely. In a criminal trial, after the State presents its evidence, a court must direct a verdict in the defendant's favor “if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.” Rule 19, SCRCrimP. “[T]he trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” *State v. Cherry*, 348 S.C. 281, 285, 559 S.E.2d 297, 299 (Ct. App. 2001).

South Carolina Code Ann. § 44-53-376(A) makes it unlawful “for a person to knowingly cause to be disposed any waste from the production of methamphetamine or knowingly assist, solicit, or conspire with another to dispose of methamphetamine waste.” Section 44-53-376(D) exempts from this provision “the individuals, entities, agencies, law enforcement groups, and those otherwise authorized, who are lawfully tasked with the proper disposal of the waste created from methamphetamine production.”

The cardinal rule of statutory construction is to give effect to the intent of the Legislature. *S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. District v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). Legislative intent is first and foremost determined by the language of the statute. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (citing *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997)). A court must construe a statute with a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 341, 47 S.E.2d 788, 789 (1948). "Statutes pertaining to the same subject should be harmonized," *Smith v. S.C. Highway Comm'n*, 138 S.C. 374, 136 S.E. 487 (1927). A criminal statute must be strictly construed, and any ambiguity must be resolved in favor of the defendant. *Hinton v. S.C. Dep't of Probation, Parole and Pardon Services*, 357 S.C. 327, 339, 592 S.E.2d 335, 336 (Ct. App. 2004).

In this case, the legislative policy behind the unlawful disposal statute is to protect individuals and the environment from the health and contamination risks associated with the chemical byproducts of methamphetamine production. Considering the requirement under subsection (D) that only identifiable and pre-selected entities may dispose of the waste products, practically and fairly construing subsection (A) means that the statute prohibits unauthorized persons from abandoning, storing indefinitely, or chemically altering the waste products or causing the waste products to be abandoned, stored indefinitely, or chemically altered by another person not legally authorized to do so.

Here, the only evidence that the State adduced to support the unlawful disposal charge was that the plastic bottle was located in a household trash can inside the camper. This evidence was not probative that Appellant abandoned the bottle or stored it indefinitely. At most, the household trashcan was a temporary location to put the bottle before inevitably moving it again. No evidence showed he attempted to chemically neutralize the contents of the bottle, placed the bottle in the exterior trash for pickup, or otherwise abandoned it outside in the environment. Accordingly, the State failed to adduce competent evidence tending to prove Appellant unlawfully disposed of the waste.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial judge's denial of his motion for a directed verdict on the charge of unlawful disposal of methamphetamine waste and issue an order of acquittal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin John Tripp", written over a horizontal line.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN WILLIAM DOBBINS,

APPELLANT

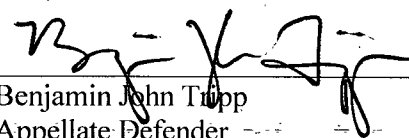
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John William Dobbins Jr. 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 Donald B. Hocker, which was held on September 11, 2013, 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 John William Dobbins Jr..

Respectfully submitted,


Benjamin John Trapp
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of September, 2014.

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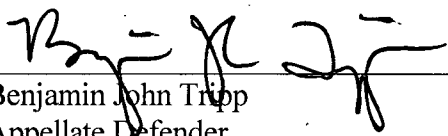
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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.

September 30th, 2014



Benjamin John Tripp
Appellate Defender

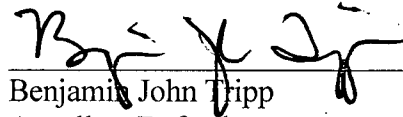
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Attorney for Appellant

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 30, 2014

A handwritten signature in black ink, appearing to read "Benjamin John Tripp", written over a horizontal line.

Benjamin John Tripp
Appellate Defender

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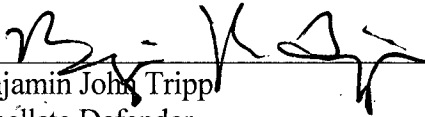
V.

JOHN WILLIAM DOBBINS,

APPELLANT

CERTIFICATE OF SERVICE

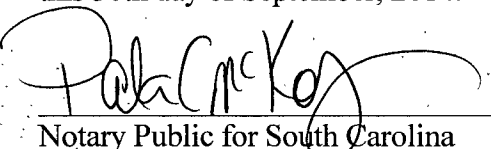
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on John William Dobbins, Jr., #338485 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 30th day of September, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2014.



Notary Public for South Carolina

(L.S.)

My Commission Expires: July 24, 2022