

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

ORIGINAL

THE STATE,

v.

RESPONDENT

RECEIVED

JUL 25 2017

MICHAEL PATTON HOLT,

SC Court of Appeals

APPELLANT

APPELLATE CASE NO 2016-001745

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

TABLE OF AUTHORITIES

Cases

<u>Evans-Smith v. Taylor</u> , 19 F.3d 899, 906 (4 th Cir. 1994).....	5
<u>Jackson v. Virginia</u> , 443 U.S. 307, 316 S.Ct. 2781 (1979).....	4
<u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 674 (1976)	5
<u>State v. Edwards</u> , 298 S.C. 272, 379 S.E.2d 888 (1989) cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).....	4
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924 (1955).....	4
<u>State v. Matarazzo</u> , 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974).....	5
<u>State v. Totherow</u> , 263 S.C. 275, 210 S.E.2d 228 (1974).....	5
<u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119 (1921)	5
<u>United States v. Ortiz</u> , 445 F.2d 1100, 1103 (10 th Cir. 1971).....	5
<u>United States v. Varoz</u> , 740 F.2d 772, 775 (10 th Cir. 1984).....	5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to grant a directed verdict to the charge of trafficking in methamphetamine when the State failed to prove who possessed the drugs?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in methamphetamine after a jury trial held before the Honorable Frank R. Addy, Jr. on August 10-11, 2016, in Greenwood County. A twenty-five (25) year sentence was imposed. Randy Chambers, Esq. was defense counsel. Bryan Moroney, Esq. and Josh Thomas, Esq. were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in failing to grant a directed verdict to the charge of trafficking in methamphetamine because the State failed to prove who possessed the drugs.

Lt. Cox testified that he worked for the Greenwood County Sheriff's Office in their drug enforcement unit. They used an informant, Tyler Duke, to make a controlled buy from the appellant on December 13, 2015, at Duke's residence. (R. p. 49, lines 4-11; R. p. 51, lines 6-14). Duke advised Lt. Cox that he could purchase an ounce or more from appellant. Duke had pending charges in Abbeville. Lt. Cox and Lt. Long set cameras up at the residence and had the money for the buy copied. (R. p. 52, line 11-p. 53, line 19).

Lt. Cox said they saw headlights pulling into the yard. (R. p. 53, line 21). Duke walked outside. Appellant came inside and then Duke came in. Appellant went into the kitchen and the exchange was made. There was some conversation. Appellant then left and Duke walked outside for a little while. Then he came back inside and he pulled a bag of meth out of his pocket and turned it over to Lt. Cox. (R. p, 54, lines 1-12).

Appellant was arrested on December 16. Cash was taken from his pocket and was put into a paper bag. Some of the cash matched the money that Duke gave appellant. (R. p. 60, line 19-p.61, line 15). He also said the address of the Duke residence was 103 Boyd Lane. (R. p. 63, lines 2-5).

On cross-examination, it was revealed that Tyler Duke had two pending trafficking in meth charges from Abbeville. (R. p. 43, line 21- p. 65, line 1) Lt. Cox also said he did not search the Duke residence to see if there was any meth hidden there. (R. p. 69, lines 1-6). His report of the buy listed the date as December 14 not December 13. (R. p. 75, lines 3-10).

Lt. Russ testified that he was the one who actually arrested appellant. He took the money from appellant, put it in a paper bag with appellant's ID and then stapled the bag shut. He then turned the bag over to Lt. Cox. (R. p. 117, line 18-p. 119, line 23).

Greg Allison testified that he was the evidence technician at the sheriff's department. (R. p. 122, lines 12-16) He was adamant that there was no ID when he unstapled the bag that allegedly contained the money from the buy. (R. p. 133, lines 2-12). He acknowledged that Lt. Cox submitted a chain of custody form. That form stated that the drugs were seized on December 14, not December 13, and that the residence was on 108 Boyd Lane, not 103 Boyd Lane, as previously testified about. (R. p. 133, line 7).

After the State concluded its case, defense counsel moved for a directed verdict. The trial court denied the motion. (R. p. 148, line 14- p. 149, line 14). That ruling was in 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 from 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 was required to prove the identity of the accused and that he was in possession of the drugs to even have transferred them to Duke. The State had the following weaknesses in their case:

- They had the wrong date of the offense;
- They had the wrong address of the residence;
- The chain of custody was not complete as appellant’s ID was not found in the stapled paper bag containing the cash;
- Duke was not in view of the police when he went out to meet appellant or after he went out to see appellant leave;
- Since the police did not search the Duke residence, they cannot say that he did not, as a major drug dealer, have his own stash of drugs to entrap appellant with a crime that he should never have been convicted of.

CONCLUSION

Based upon the above he should not have been convicted of trafficking in meth. A directed verdict should have been granted in his favor.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL PATTON HOLT,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Patton Holt 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 August 8 - 12, 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 Michael Patton Holt.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 25th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL PATTON HOLT,

APPELLANT

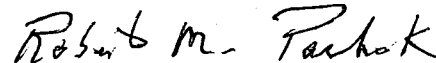
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s): 2016-GS-24-00512
- (2) Trial transcript dated August 10-11, 2016

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

July 25, 2017



Robert M. Pachak
Appellate Defender

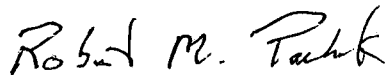
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

July 25, 2017.



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