

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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 ORIGINAL

Appeal from Berkeley County

Honorable Maite Murphy, Circuit Court Judge

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THE STATE,

RESPONDENT,

RECEIVED

OCT 20 2017

SC Court of Appeals

V.

CHAD ROBERT KOZLOSKI,

APPELLANT

APPELLATE CASE NO 2017-000209

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ANDERS BRIEF OF APPELLANT

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**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 judge erred in admitting prior bad acts testimony into  
evidence at trial.....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

## TABLE OF AUTHORITIES

### Cases

State v. Martinez, 380 S.C. 232, 669 S.E.2d 598 (2008)..... 4

State v. Peake, 302 S.C. 378, 316 S.E.2d 302 (1990)..... 4

State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992)..... 4

### Constitutional Provisions

S.C. Const. art. 1 § 3 ..... 4

U.S. Const. amend. XIV ..... 4

**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in admitting prior bad acts testimony into evidence at trial.

## **STATEMENT OF THE CASE**

Appellant Chad Robert Kozlowski was convicted of possession of heroin per jury trial held during the January 2017 term of the Berkeley County General Sessions Court before Judge Maite Murphy. Appellant was sentenced to imprisonment for a period of five years, suspended upon the service of three years and three years probation. Attorneys Debra Kay Littlejohn and John Church represented appellant at trial, and Assistant Solicitors Benjamin A. Dennis and Price Sigal appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

## ARGUMENT

The trial judge erred in admitting prior bad acts testimony into evidence at trial.

Prior to trial, the issue of the legality of appellant's arrest on January 14, 2015, was brought to the attention of the trial judge. Apparently, two arrest warrants were previously signed by a judge, which led to the arrest of appellant and the subsequent discovery of the heroin in his possession at the time of his arrest. One warrant was for petty larceny and the other warrant was for obtaining a signature by a property owner under false pretenses. As a result, the trial judge addressed the obvious prior bad acts issue raised by the warrants as follows:

Defense Counsel: I don't know if the jury [will] understand that you have to have probable cause to arrest somebody

Court: I think the officer can testify [that they] had an active warrant...

Defense Counsel: Why don't we say they wanted to talk [with him].

Court... I think we need to be honest with them in a way that's not prejudicial to your client...and I think, obviously, they had a valid arrest warrant there was an active warrant at the time. Tr. 58, l. 22  
- Tr. 60, l. 17.

At trial, Officer Shane Cooks testified that he was dispatched to an area near an apartment complex in Berkeley County regarding an investigation into two arrest warrants issued against appellant, and that after appellant was located there, he was placed under arrest. Officer Cook stated that during the arrest, appellant advised that he had "syringes in his pocket as well as heroin." A blue baggie containing residue was found on appellant at the time of the arrest. Tr. 71, l. 2-25. Also, a search of appellant at the detention center yielded a baggie containing cotton soaked in brown liquid found in his pants pocket. Tr. 72, lines 1 - Tr. 73, l. 7; Tr. 98, l. 3 - Tr. 101, l. 8.

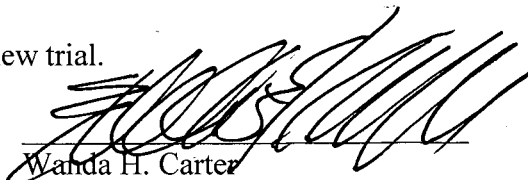
Officer Cook's trial testimony also revealed the nature and subject matter of the active arrest warrants drawn against appellant before his arrest, and that this was the reason why the police approached and ultimately confronted and arrested appellant on the day in question. Officer Cook's testimony was that during the time in question, he had been investigating "property crimes" and that "two warrants had been issued [for appellant] in reference to **stolen property.**" Tr. 71, l. 4-6.

Appellant was on trial for drug possession. Clearly, additional information about the nature of the arrest allegations explaining why appellant was stopped per these active arrests warrants issued against him was damaging information in and of itself as it suggested his involvement in and/or connection to other criminal offenses. This prior bad act testimony was prejudicial to appellant's case because it portrayed appellant as having an overall general disposition or propensity to commit crimes and that as a result, he was therefore likely guilty of the drug offense for which he was on trial in the instant case. The prior bad acts evidence presented here was particularly egregious and prejudicial in light of the fact that appellant's testimony was exculpatory to the effect that he stated that the items seized during the search belonged to his girlfriend as he was wearing her clothing (jacket) when he was stopped by police and arrested. Appellant's girlfriend Laura Langdon verified and admitted to the same via her testimony given at trial. Tr. 111, l. 22 – p. 115, l. 12; Tr. 123, l.7 – p. 133, l. 25.

Prior bad acts evidence is inadmissible to show that the accused is a bad person or has the propensity to commit the crime charged against him. State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992); State v. Peake, 302 S.C. 378, 316 S.E.2d 302 (1990); State v. Martinez, 380 S.C. 232, 669 S.E.2d 598 (2008). This prior bad acts error deprived appellant of his right to a fair trial. See Fourteenth Amendment and article 1 § 3 of the South Carolina State Constitution.

**CONCLUSION**

Based on the foregoing argument, appellate counsel requests that appellant's case be reversed and remanded to the circuit court for a new trial.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of October, 2017.

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

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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

October 20, 2017

  
Wanda H. Carter  
Deputy Chief Appellate Defender

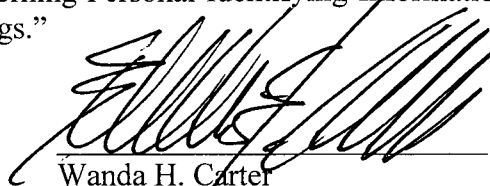
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**CERTIFICATE OF COUNSEL**

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 20, 2017.



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