

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Hon. John C. Hayes, Circuit Court Judge

State of South Carolina,.....RESPONDENT,

-vs-

Jarvis T. Hughes,.....APPELLANT

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MAY 03 2017

SC Court of Appeals

APPELLATE CASE NO. 2016-001462

APPELLANT'S PRO-SE ANDERS BRIEF

Jarvis Hughes
SCDC# 280975
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

TABLE OF CONTENTS

TABLE OF CONTENTS, ,i
TABLE OF AUTHORITIES,,ii
STATE OF ISSUE ON APPEAL,,1
STATEMENT OF THE CASE, ,2
ARGUMENT, ,3
CONCLUSION,,6
CERTIFICATE OF SERVICE, ,7

TABLE OF AUTHORITIES

Arizona v. Fulminante, 499 U.S. 279 (1991),.....4,5
Rose v. Clark, 478 U.S. at 577-78, 106 S.Ct. at 3106,.....5
State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946),.....4
State v. Thrailkil, 73 S.C. 314, 53 S.E. 482 (1906),.....4

Other Authorities Relied on

Fourteenth Amendment of the U.S. Constitution

STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT COMMIT REVERSIBLE
ERROR IN FAILING TO INSTRUCT THE JURY ON
THE ESSENTIAL ELEMENT OF "CRIMINAL
INTENT"?

STATEMENT OF THE CASE

Appellant was indicted by the York County Grand Jury during the November Term of General Session for crack cocaine. ROA. 311. The case was called for trial on June 20, 2016 before a jury and the Honorable John C Hayes, III, presiding. The State was represented by Matthew Shelton and Appellant was present and represented by Melissa Inzerillo. ROA. 1.

At the conclusion of the trial the jury convicted Appellant as indicted June 21, 2016, ROA. 291, 1.2-8 and Judge Hayes sentenced Appellant to twenty (20) years confinement. ROA. 304, 1.1-10.

A timely notice of appeal was filed and Appellant is represented by Taylor D. Gilliam of the South Carolina Office of Indigent Defense. Gilliam filed a no merit Anders Brief. Appellant's pro-se Anders brief is as follows:

ARGUMENT

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN FAILING TO INSTRUCT THE JURY ON THE ESSENTIAL ELEMENT OF "CRIMINAL INTENT"?

Relevant Facts

Following closing summation for both parties the Court charged the jury on the law. ROA. 279. The Court instructed the jury on the presumption of innocence, ROA. 279-280.

The Court then told the jury:

I remind you that I have the duty to charge you the law that you are to apply to the facts in this case, and it's up to you to do so, whether you think I charge the law in error, or whether you think the law should be different, Your oath requires you to take, accept, and apply the law as I charge it.

ROA. 280, 1.16-21

The Trial Court went on to instruct the jury regarding witness believability, ROA. 281-283, L.16. The circumstantial and direct evidence, ROA.283, L.17-p.284, and Reasonable doubt and the defendant's right to remain silent, ROA. 284-285.

Directly after the Court instructed the jury regarding distribution of crack cocaine, ROA. 286. However, the Court failed to instruct the jury regarding the essential element of any crime in the State of South Carolina, "...criminal intent". Id (emphasis supplied).

DISCUSSION

Appellant contends that his right to fair trial was violated when the Trial Court committed reversible error in failing to instruct the jury regarding the essential element of criminal intent.

The statutory definition for drug offenses has not altered in anyway the ingredients which common law deemed essential elements and in no wise affects the essential elements to constitute any crime in South Carolina, but leaves them exactly as they stood at common law. *State v. Judge*, 208 S.C. 497, 505, 38 S.E.2d 715, 719 (1946).

Consequently, the "essential element of criminal intent" is still an [essential element] of distribution of crack cocaine. *State v. Thrailkill*, 73 S.C. 314, 314, 53 S.E. 482 (1906)("criminal intent"... is an essential element in every common law crime), Cf. *State v. American Chemical Co.*, 118 S.C. 333, 337, 110 S.E. 800, 802 (1920).

The error complained of here is "structural error" which requires reversal. In *Arizona v. Fulminante*, 499 U.S. 279 (1991), a five-majority of the Court (Id at 306-312) elucidated this rule of per se prejudice (sometimes called the "rule of automatic reversal" (Id at 294), by distinguishing between the concepts of "structural error" and "trial error": "structural defects in the constitution of the trial mechanism (Id at 309-310), are per se prejudicial; while "trial errors" occurring "during the presentation of the case to the jury (Id at 307) are subject to harmless error analysis. (Id at 308-310).

Structural errors must be corrected regardless of their affect on the trial because they violated basic protections without which a criminal trial can reliably serve it's function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair. (Id at 310)(citing Rose v. Clark, 478 U.S. at 577-78, 106 S.Ct. at 3106)(citations omitted).

In the instant case the Trial Court plainly instructed the jury they were disregard what they believed the law to be and to accept exactly as the Court charged it their job was to apply it to the facts of the case. A stringent review of the Court's charge to the jury omits any reference to the essential element of criminal intent and therefore this issue should be reviewed as structural error affecting the constitution of the trial mechanism which requires automatic reversal.

Appellant's conviction and sentence should be vacated and the case remanded for a new trial consistent with due process.

CONCLUSION

Based on the foregoing reasons, Appellant's conviction and sentence should be vacated and the case remanded back to the lower court for a new trial.

Respectfully Submitted,

/s/ JARVIS HUGHES

Jarvis Hughes

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APPELLATE CASE NU. 2016-001462

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Pro-Se Anders Brief on the attorney for Respondent, Mr. J. Benjamin Aplin, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211, by placing the aforesaid in properly addressed, sufficient postage affixed and placed in the U.S. Mail this 1 day of MAY, 2017.

SWORN TO AND SUBSCRIBED BEFORE ME

this 1st day of May, 2017

Tamara Conwell
NOTARY PUBLIC

MY COMM. EXPIRES ~~My Commission Expires~~
September 25, 2023

Respectfully Submitted,

/s/ Jarvis Hughes

Jarvis T. Hughes

From: Jarvis Hughes
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TO: Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC. 29211

RE: Pro-Se Anders Brief

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SC Court of Appeals

Dear Ms. Kitchings,

Enclosed for filing please find my Initial pro-se Anders Brief. Due to the fact SCDC does not make legal copies, could you please clock stamp the enclosed and return a copy to me so that I may timely serve Respondents. I thank you for your time in this matter.

I am,

Jarvis Hughes
SCDC# 280975

Appellant, pro-se

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P.C.I. MAILROOM

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