

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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JUN 04 2012

Appeal from Richland County

Steven H. John, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HONORE T. DAVIS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES .....2

STATEMENT OF ISSUE ON APPEAL .....3

STATEMENT OF THE CASE .....4

ARGUMENT .....5

CONCLUSION .....7

PETITION TO BE RELIEVED AS COUNSEL .....8

CERTIFICATE OF COUNSEL .....9

TABLE OF AUTHORITIES

**Cases**

State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (2003) ..... 6

State v. Colf, 337 S.C. 622, 525 S.E. 2d 246 (2000)..... 6, 7

**Rules**

Rule 403, SCRE..... 6

Rule 609 (a)(2), SCRE..... 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing appellant to be impeached with a prior conviction of assault and battery of a high and aggravated nature when the conviction was not a crime of dishonesty and the trial court failed to put a Rule 403, SCRE analysis on the record?

STATEMENT OF THE CASE

Appellant was convicted of possession with intent to distribute cocaine base after a jury trial held before the Honorable Steven H. John on October 11-13, 2011, in Horry County. A sentence of ten (10) years was imposed. William I. Diggs, Esquire was trial counsel.

This appeal follows.

## ARGUMENT

The trial court erred in allowing appellant to be impeached with a prior conviction of assault and battery of a high and aggravated nature when the conviction was not a crime of dishonesty and the trial court failed to put a Rule 403, SCRE analysis on the record.

Appellant had been caught selling drugs to a confidential informant. This same informant pleaded for more drugs and appellant was supposed to meet with the informant to sell him more drugs on January 28, 2011 at a Sav-Mart convenience store on Kings Highway in Myrtle Beach. Unbeknownst to appellant, this meeting was really a set up by the police to get appellant to the convenience store so they could arrest him for the previous sale he made to the informant. The police were near the scene waiting for appellant. As appellant walked toward the store, the police started approaching. Appellant saw them and hurriedly walked into the store and took the drugs he had on his person and put them into a frozen food cooler. The police arrested appellant but they could not find any drugs on him. They reviewed the store's security video tape and they saw appellant dropping something in the cooler. They looked in the cooler and found the drugs.

Appellant's defense was entrapment because the informant kept hounding him for drugs. The trial court charged the law of entrapment in its instructions to the jury. (ROA p. 189, line 15 – p. 190, line 18).

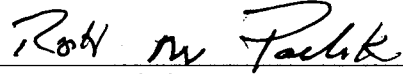
Prior to the defense putting up its case, the trial court went over what crimes appellant could be impeached with. Over defense counsel's objection, the trial court ruled that appellant could be impeached with a 2000 conviction for assault and battery of a high and aggravated nature (ABHAN). The court found that the probative value far outweighed any prejudicial effect to appellant. (ROA p. 112, line 14 – p. 116, line 5).

The trial court erred in ruling that appellant could be impeached with the ABHAN conviction. Traditionally, one may be impeached for a crime involving dishonesty without having to make a probative value prejudicial impact analysis under Rule 609 (a)(2), SCRE. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (2003). ABHAN, however, is not a crime involving dishonesty. One may also be impeached for a crime that is punishable by death or imprisonment in excess of one year. Rule 609 (a)(1), SCRE. Under this section of the rule, the prior convictions admissibility is subject to Rule 403, SCRE and a determination by the court that the probative value outweighs its prejudicial effect to the accused. In State v. Colf, 337 S.C. 622, 525 S.E. 2d 246 (2000) the Court held that a trial court abuses “its discretion by admitting prior convictions without conducting a balancing test and articulating for the record specific facts and circumstances for admissibility.” State v. Colf, 337 S.C. at 626, 525 S.E.2d at 248 (emphasis supplied).

CONCLUSION

Appellant's case should be remanded for the trial court to put on the record the factors outlined in Colf for admitting the ABHAN conviction.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Richland County

Steven H. John, Circuit Court Judge

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

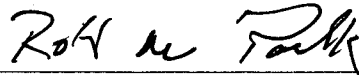
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Counsel for Honore T. Davis states:

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 Steven H. John, which was held on October 13, 2011, 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 Honore T. Davis.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

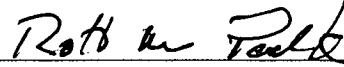
ATTORNEY FOR APPELLANT

This 4th day of June, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 4<sup>th</sup>, 2012



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Robert M. Pachak  
Appellate Defender

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THE STATE,

RESPONDENT,

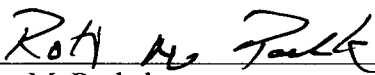
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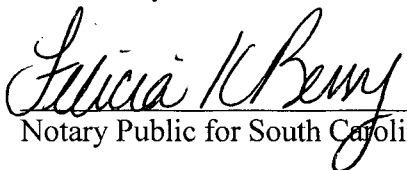
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal on Honore T. Davis, #264966 at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472; this 4th day of June, 2012.

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4th day of June, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: June 21, 2020 .