

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDDIE F. ALEWINE,

APPELLANT

APPELLATE CASE NO. 2012-212343

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing the solicitor to ask Detective Kirkland who they targeted to make a controlled purchase of crack cocaine from because it placed appellant's character into issue and also suggested prior bad acts?

STATEMENT OF THE CASE

Appellant was convicted of distribution of crack cocaine, third offense, after a jury trial held before the Honorable D. Craig Brown in Lexington County on June 18 – 19, 2012. A sentence of eighteen (18) years was imposed. Dale Scott, Esquire, and Robbie McNair, Esquire, were the solicitors. Wayne Floyd, Esquire, represented appellant.

This appeal follows.

ARGUMENT

The trial court erred in allowing the solicitor to ask Detective Kirkland who they targeted to make a controlled purchase of crack cocaine from because it placed appellant's character into issue and also suggested prior bad acts.

Appellant was tried for distribution of crack cocaine to a confidential informant, Larry Scott, on August 30, 2011, off of U.S. Highway 1 in Gilbert near an IGA grocery store. Detective Kirkland testified that he, Agent Barnes, Agent Govan, Agent Hazewinkel, and Agent Correl were part of the Lexington County Multiagency Narcotics Enforcement Team. They all met with the confidential informant on August 30. (Tr. p. 61, line 17 – p. 62, line 1; Tr. p. 66, line 23 – p. 67, line 5; Tr. p. 70, lines 4 – 7). Detective Kirkland searched the informant to make sure he did not have any drugs or money on his person and the search came back negative. They put a wire on him so they could listen to the controlled purchase. They also gave him documented funds so he could buy \$100 of crack cocaine. (Tr. p. 67, line 8 – p. 68, line 7; Tr. p. 68, line 24 – p. 69, line 1).

When the confidential informant made his purchase from someone in a vehicle, Detective Kirkland testified that he could not see who was in the vehicle. (Tr. p. 83, lines 19 – 23). Agent Hazewinkel could not see the occupants of the vehicle. (Tr. p. 92, line 15). And neither could Agent Barnes or Agent Govan. (Tr. p. 96, lines 22 – 23; Tr. p. 102, lines 19 – 21).

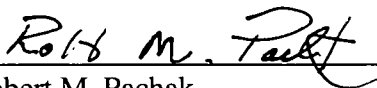
Early in Detective Kirkland's testimony, the solicitor asked what he was looking to use the confidential informant for. The detective replied, "To make a controlled purchase of crack cocaine." The solicitor then asked, "Who was your target suspect?" The detective replied, "Mr. Eddie Alewine." (Tr. p. 66, lines 1 – 5).

This line of questioning could only beg the jurors to ask why appellant was a “target suspect.” The most logical answer would be because the police knew he sold crack cocaine on other occasions. This placed appellant’s character into issue. In a criminal case, the State cannot attack the character of the defendant unless the defendant first places his character in issue. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Character evidence is so highly prejudicial that it is usually excluded under hard and fast rules. State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978). Also, evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad person. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). In State v. Bostic, 307 S.C. 226, 414 S.E.2d 175 (Ct. App. 1992), the Court held that it was unduly prejudicial for a police officer to testify that he believed a drug defendant made prior drug sales. This case should be no different. The trial judge should not have allowed this testimony.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of December, 2012.

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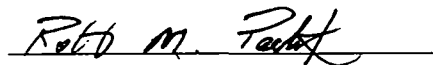
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eddie F. Alewine 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 D. Craig Brown, which was held on June 19, 2012, 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 Eddie F. Alewine.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of December, 2012.

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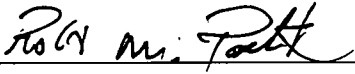
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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.

December 3rd, 2012



Robert M. Pachak
Appellate Defender

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Attorney for Appellant

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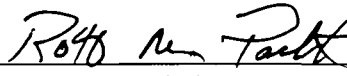
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CERTIFICATE OF SERVICE

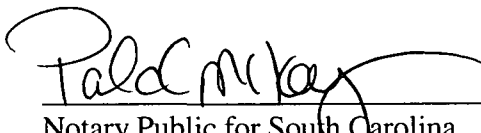
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a true copy of the Anders Brief of Appellant and Designation of Matter, along with the Record on Appeal, was served on Eddie F. Alewine, #351282 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of December, 2012.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of December, 2012.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.