

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WALTER DORSCH,

APPELLANT

Appellate Case No. 2012-208507

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the solicitor to incorrectly refer to appellant as a third-time sex offender during opening arguments because this prejudiced appellant's defense at trial and prematurely placed his character into evidence in the case.

STATEMENT OF THE CASE

Appellant Walter Dorsh was found guilty of violation of the sex offender registry pursuant to a jury trial held at the February 2012 term of the Horry County General Sessions Court before Judge Edward B. Cottingham. Appellant was sentenced to imprisonment for a period of three hundred sixty-six days. William Edward Chrisco represented appellant at trial.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in allowing the solicitor to incorrectly refer to appellant as a third-time sex offender during opening arguments because this prejudiced appellant's defense at trial and prematurely placed his character into evidence in the case.

This case consisted of the testimony of three witnesses: appellant and the two administrative clerks (Paulette Rathbun and Lori Avant) who process sex offender registrations in Horry County. Rathbun and Avant testified that appellant failed to register as a sex offender in October 2010 as required, and that as a result, a warrant for appellant's arrest was issued on March 9, 2011. Appellant was arrested on April 14, 2011. Tr. 29, l. 7-p. 36, l. 25; Tr. 44, l. 7-p. 45, l. 2; Tr. 49, l. 8-p. 58, l. 16. Appellant stated that he never received the sex registry appointment letter mailed by the clerks in September 2010 reminding him of his duty to register as a sex offender. Tr. 65, l. 20-p. 66, l. 25.

Appellant was convicted of third degree criminal sexual conduct in 1995. Appellant registered as a sex-offender per the sex registry on July 14, 2010. Appellant was arrested for not registering under the sex offender registry as required in October, 2010.

During the opening arguments, the solicitor made the following remarks:

In the State of South Carolina, there are certain offenses that if you are convicted of those particular offenses, you are required to register on something called the Sexual Offender Registry. The defendant in this case was convicted in 1995 of a crime called criminal sexual conduct, **third offense**. And when he was convicted in that case, in addition to whatever sentence he received, he was required to go into the sheriff's office every ninety days, meet with these ladies here, verify his address, have his photograph taken and complete other forms as is required by the State of South Carolina.

Tr. 27, l. 9-19.

Thereafter, defense counsel made the following opening remarks:

Mr. Chrisco: First of all, I want to correct the solicitor...it wasn't criminal sexual conduct, third offense; [for which appellant was convicted that triggered the sex registry requirement, but rather] it was criminal sexual conduct, **third degree**, a lot of difference [that triggered the registry requirement].

Tr. 28, lines 10-11; and Tr. 28, lines 14-16.

Per S.C. Code Ann §23-3-460 (2010) and §23-3-430 (2010), appellant was required to register as a sex offender (Tier III) every ninety days due to his prior conviction of third degree criminal sexual conduct.

In the case at bar, the solicitor's incorrect reference to appellant's prior criminal record as a third-time sex offender was extremely prejudicial because this portrayed appellant as a habitual sex offender who had multiple prior sex convictions, which in turn suggested he had no restraint or discipline with respect to sexual matters. Also, this type of sexual predator picture of appellant that resulted from the solicitor's misstatement suggested further that appellant was guilty of the sexual offender register violation for which he was on trial. In short, the jurors surely surmised that appellant possessed a sex offender character trait.

Evidence of a person's character or a character trait cannot be admitted for the purpose of proving action in conformity therewith on a particular occasion as the term character refers to a generalized description of a person's disposition or a general trait. See State v. Holden, 382 S.C. 278, 676 S.E.2d 690 (2009), citing to State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998) and Rule 404(a), SCRE. Compare State v. Brown, 344 S.C 70, 543 S.E.2d 552 (2001), where the defendant was convicted of murder and the court held it was error to admit the defendant's wife's testimony that she knew that her husband became violent when he became angry because

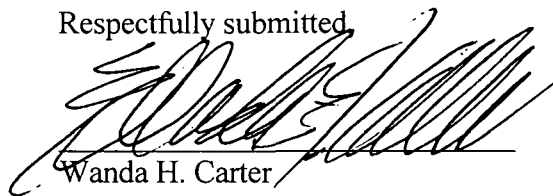
this “indicated appellant’s general propensity to become violent” and the likelihood that he would commit such a crime as murder.

Here, the trial judge’s error in allowing the solicitor to incorrectly state appellant’s prior record to the jury during opening arguments violated appellant’s right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1 § 14 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that his conviction and sentence be reversed and his case remanded to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of November, 2012.

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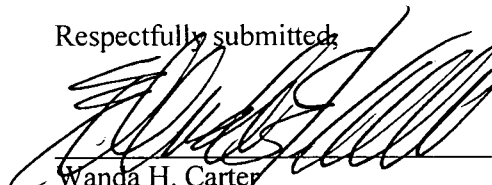
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Walter Dorsch states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Edward B. Cottingham, which was held on February 8, 2012, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Walter Dorsch.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of November, 2012.

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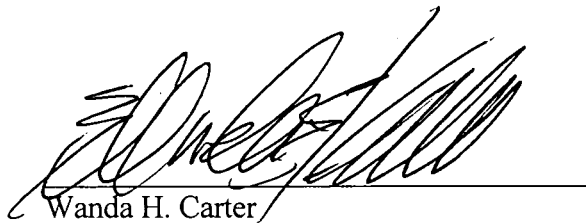
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript
- (2) Indictment
- (3) Sentencing Sheet
- (4) Arrest Warrant

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

November 21st, 2012



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Attorney for Appellant

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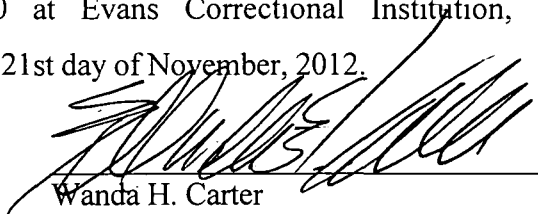
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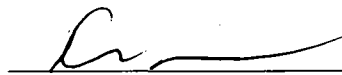
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant 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 on Walter Dorsch, #289720 at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, 21st day of November, 2012.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of November, 2012.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.