

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 09 2013

Appeal from Aiken County

SC Court of Appeals

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINCY WRIGHT,

APPELLANT

APPELLATE CASE NO. 2012-212692

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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Vaughn v. State, 362 S.C. 163, 607 S.E.2d 72 (2004) 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying defense counsel's motion to suppress Investigator Toole's statement to appellant, "I know you're involved in this" because it conveyed hearsay that the police had other information about appellant's guilt and bolstered the State's case?

STATEMENT OF THE CASE

Appellant was convicted of first-degree burglary after a jury trial held before the Honorable William P. Keesley on July 16, 2012, in Aiken County. A twenty (20) year sentence was imposed. Barry L. Thompson, II, Esquire, was trial counsel. David W. Miller and Nicholas R. McCarley were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in denying defense counsel's motion to suppress Investigator Toole's statement to appellant, "I know you're involved in this" because it conveyed hearsay that the police had other information about appellant's guilt and bolstered the State's case.

The indictment for first degree burglary alleged that appellant, "along with others, did in Aiken County on or about April 7, 2011, willfully and unlawfully enter the dwelling of Tarlishea Harris located at _____, North Augusta, South Carolina, without consent and with the intent to commit a crime therein and while effecting entry or while in the dwelling or in immediate flight therefrom he or another participant in the crime became armed with a deadly weapon to wit: a handgun..."

At a Jackson v. Denno hearing, Investigator Chris Toole with the North Augusta Department of Public Safety testified that he took a video-taped statement from appellant on January 20, 2012. (Tr. p. 66, lines 2 – 24). Defense counsel stated that he did not object to the voluntariness of the statement, but he did object to a statement made by the police to appellant when Investigator Toole says, "I know you're involved in this." (Tr. p. 71, line 22 – p. 73, line 21). The trial court denied defense counsel's motion to suppress Investigator Toole's statement to petitioner. (Tr. p. 75, line 20 – p. 76, line 4). That ruling was in error.

In State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990), the Court held that a prosecutor's comments in closing argument concerning statements made by uncalled witnesses unfairly prejudiced the defendant's right to a fair trial by placing the testimony of the prosecutor in front of the jury as if the prosecutor had taken the stand himself. In Vaughn v. State, 362 S.C. 163, 607 S.E.2d 72 (2004), a solicitor's closing argument vouched for the

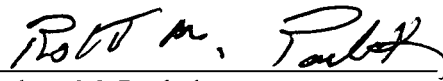
credibility of a police officer and stated that absent witnesses would have provided testimony cumulative to the officer's testimony. The court held such comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.

In this present case, Investigator Toole's statement to appellant that "I know you're involved in this" conveyed hearsay that the police had other information about appellant's guilt from other witnesses who did not testify. This impermissibly bolstered the State's case and denied appellant a fair trial.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of April, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
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THE STATE,

RESPONDENT,

V.

QUINCY WRIGHT,

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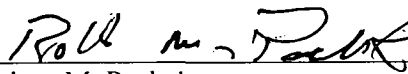
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quincy Wright 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 William P. Keesley, which was held on July 18, 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 Quincy Wright.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of April, 2013.

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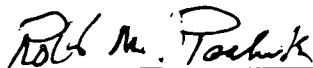
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (July 16, 2012)

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

April 9th, 2013



Robert M. Pachak
Appellate Defender

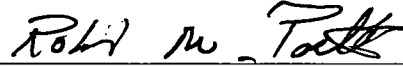
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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 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."

April 9, 2013



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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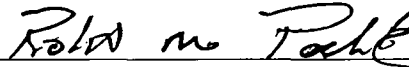
V.

QUINCY WRIGHT,

APPELLANT

CERTIFICATE OF SERVICE

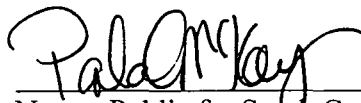
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a true copy of the Anders Brief of Appellant and Record on Appeal have been served on Quincy Wright, #351822 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 9th day of April, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of April, 2013.

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