

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR ANTHONY JONES,

APPELLANT

APPELLATE CASE NO. 2012-213343

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to allow evidence of the complaining witness's possible gang membership to show bias and to impeach his credibility?

STATEMENT OF THE CASE

Appellant was convicted of armed robbery after a jury trial held before the Honorable William P. Keesley on October 30 – November 2, 2012, in Saluda County. An eleven (11) year sentence was imposed. Benjamin A. Stitely, Esquire, was trial counsel. Ervin J. Maye, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to allow evidence of the complaining witness's possible gang membership to show bias and to impeach his credibility.

Appellant was tried for armed robbery for feloniously taking from Jerrell Bookman car stereo speakers and \$750.00 in cash on July 9, 2009, in Saluda County. According to appellant's own statement, he got a text message on his phone from Amber Salaam wanting to know if he had some tire rims to sell. She said she had an easy person to set up to rob. That person, Jerrell Bookman, was looking to buy some large tire rims for his car to make it ride higher above the ground. She went on to tell appellant that she was driving on the Newberry Highway and to meet her at the Burger King in Saluda. Salaam was riding with Bookman pretending that they were going to Saluda to buy the tire rims. Appellant texted her back and told her to follow him and two other guys to a dirt road where Bookman was robbed. (Tr. p. 433, line 20 – p. 434, line 15).

Bookman testified that Salaam showed him some 23-inch rims and that they would cost him \$750.00. He drove to the Burger King in Saluda and followed a gold-ish car with no hubcaps to a dirt road in a secluded area where he was robbed at gun point of his \$750.00 and his car speakers. (Tr. p. 199, line 1 – p. 207, line 20).

Defense counsel proceeded on a theory that this was really a drug deal gone bad. (Tr. p. 329, lines 15 – 25). He also wanted to impeach Bookman over possible gang membership. (Tr. p. 481, line 11 – p. 486, line 11). The trial court would not allow impeachment over gang membership. (Tr. p. 505, line 21 – p. 506, line 13). That ruling was in error.

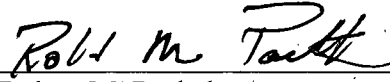
In United States v. Abel, 469 U.S. 45, 105 S.Ct. 465 (1984), the Supreme Court of the United States held that evidence showing membership of the defendant and a defense witness in a prison gang and showing that gang's tenets required its members to lie, cheat, steal and kill to protect each other was sufficiently probative of defense witness' possible bias toward the defendant to warrant its admission into evidence in a prosecution for bank robbery. In United States v. Hackney, 203 F.3d 1160 (9th Cir. 2000), the Court held that the district court did not abuse its discretion in admitting, for the purpose of impeaching a co-defendant's exculpatory testimony for bias, the testimony of a police gang expert concerning the gangs' "code of silence."

In light of the above case, defense counsel should have been allowed to impeach Bookman over his gang involvement.

CONCLUSION

Appellant's conviction should be reversed:

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 3rd day of May, 2013.

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IN THE COURT OF APPEALS

Appeal from Saluda County
William P. Keesley, Circuit Court Judge

THE STATE,

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V.

VICTOR ANTHONY JONES,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Victor Anthony Jones 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 November 2, 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 Victor Anthony Jones.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of May, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

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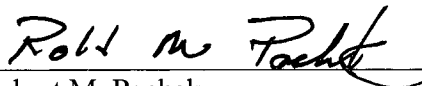
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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.

May 3rd, 2013



Robert M. Pachak
Appellate Defender

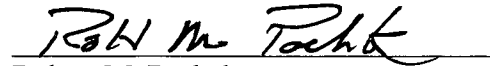
South Carolina Commission on Indigent Defense
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Attorney for Appellant

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."

May 3, 2013



Robert M. Pachak
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

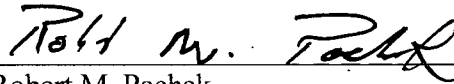
V.

VICTOR ANTHONY JONES,

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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Victor Anthony Jones, #337908 at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 3rd day of May, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of May, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.