

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SEP 10 2013

SC Court of Appeals

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES WATSON,

APPELLANT

APPELLATE CASE NO. 2012-213302

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to direct a verdict in favor of appellant because the State failed to prove jurisdiction and venue in Jasper County?

STATEMENT OF THE CASE

On August 23, 2011, a Jasper County grand jury indicted appellant for criminal sexual conduct with a minor – victim under eleven years old and child neglect. On October 15-17, 2012, appellant was tried before the Honorable Perry M. Buckner and a jury. R. 1. Erin Vaux represented the State and Robert M. Hughes represented appellant. R. 1. The jury convicted appellant on both counts. R. 410, ll. 1 – 10. Appellant timely filed and served a notice of appeal and this appeal follows.

ARGUMENT

The trial court erred in failing to direct a verdict in favor of appellant because the State failed to prove jurisdiction and venue in Jasper County.

The South Carolina Constitution mandates that a criminal defendant be indicted and tried in the county “where the crime has been committed.” S. C. Const. art I, § 11. “A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment.” State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996). In State v. McCoy, 98 S.C. 133, 82 S.E. 280 (1914), the Supreme Court reversed because the trial judge failed to grant a directed verdict when the evidence showed that the crime occurred in a county that differed from the county where the indictment was obtained.

The State at all times has the burden of proving the defendant’s guilt beyond a reasonable doubt. State v. Logan, ___ S.C. ___, ___ S.E.2d ___, Shearouse Adv. Sheet No. 36, 2013 WL 4082346 (Aug. 14, 2013). This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two. Id.

In this case, the State failed to meet its burden of proving that the crime occurred in Jasper County. The minor complainant in this case testified that appellant sexually assaulted her at their home. R. 178, l. 25 – 183, l. 22. However, there was no testimony that this residence was located in Jasper County.

At the close of the State’s case, appellant moved for a directed verdict “on the grounds that jurisdiction has not been established.” R. 280, ll. 5 – 8. The solicitor argued to the court that her first witness testified regarding the address of the residence. R. 281, ll. 5 –

11. This was incorrect. The first witness was Deputy Ruiz. Deputy Ruiz actually said, “I don’t know the exact address, but it was on Mill Pond Road and Grays Highway.” R. 149, ll. 13 – 15. The solicitor never asked Deputy Ruiz whether the residence was located within Jasper County. R. 142, ll. 17 – 155, l. 16. Appellant’s attorney pointed out the defects in Deputy Ruiz’ testimony to the court. R. 282, ll. 2 – 5. Judge Buckner denied the motion for directed verdict, stating there was “clearly evidence from which the jury could infer that this occurred in Jasper County from the testimony.” R. 283, ll. 4 – 7.

Apparently the trial judge did not believe the evidence was clear because after the evening recess, the first thing the next morning the trial judge placed on the record that he had performed a further review of the testimony regarding jurisdiction. R. 304, l. 17 – 306, l. 24. The trial judge noted the testimony of Deputy Ruiz that the child complainant attended an elementary school in Jasper County. R. 305, ll. 3 – 8. The court then stated, “I take judicial notice that you cannot attend... the elementary school, unless you are a resident of Jasper County.” R. 306, ll. 1 – 3. The trial judge also stated that it was “inferable” that the intersection of Mill Pond Road and Grays Highway was in Jasper County, but acknowledged that Grays Highway extended beyond the Jasper County border. R. 306, ll. 3 – 8.

The trial judge inappropriately used judicial notice of an alleged school policy to support his ruling on jurisdiction. “For a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof.” Masters v. Rogers Dev. Group, 283 S.C. 251, 321 S.E.2d, 194, 196 (Ct. App. 1984). “Unless the fact that either of such common or general knowledge that it is accepted by the public without

qualification or contention, or its accuracy is capable of verification by reference to readily available sources of indisputable reliability, it is not subject to judicial notice.” Id.

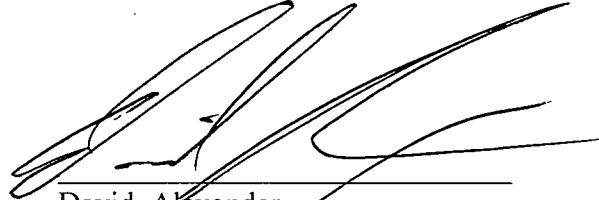
In this case, it was questionable whether even the proposition of which the trial judge took judicial notice was sufficiently accepted or verifiable. Furthermore, the trial judge made a leap of logic from the questionable existence of a school policy to the location of the residence. Just because a policy may exist requiring students to live in the same county in which they attend school does not mean that that every family follows this policy. There was no explanation or citation to any statistics or other evidence to support an inference that every family follows school district policy with respect to whether their child attends elementary school in the same county as their residence. This use of judicial notice was therefore impermissible. Without the use of judicial notice, the State failed to present sufficient evidence of the location of the residence and the trial judge erred in refusing to grant a directed verdict.¹

¹ In the event this Court elects to abandon error preservation rules or address PCR issues on direct appeal, appellant would direct the Court’s attention to the following issues in this trial: (1) the qualification of the forensic interviewer as an expert in forensic interviewing and delayed reporting, R. 25, 197; (2) the inadmissible hearsay testimony of Deputy Ruiz that the child was struck in the eye and instructed to lie, R. 144; (3) multiple inadmissible instances of hearsay during the testimony of Janell Barker; (4) the inconsistency of the child’s testimony with the forensic interview, even though trial counsel did not cross-examine the child on these inconsistencies; (5) allowing the forensic interviewer to testify about a “non-offending parent,” R. 211; (6) inadmissible bolstering during the forensic interviewer’s testimony, R. 210; (7) inadmissible hearsay during the pediatrician’s testimony, R. 252-53; (8) inadmissible bolstering during the pediatrician’s testimony (“In my opinion, it’s likely that she was the victim of sexual abuse,” despite failing to find any physical evidence of abuse, R. 271; (9) inadmissible bolstering during the case officer’s testimony (“I determined that Minor was a victim of sexual abuse”), R. 271; and (10) the trial court’s ruling that the manner of sexual abuse was a “finding by the court” and not the jury, R. 310.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2013.

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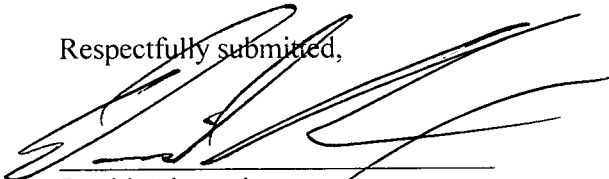
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Watson 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 Perry M. Buckner, which was held on October 17, 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 James Watson.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2013.

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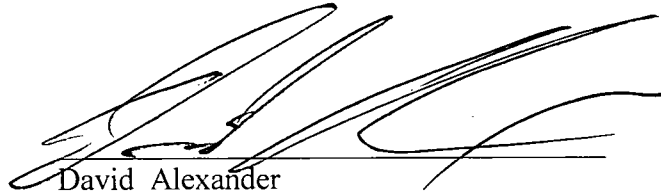
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript.

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

September 10th, 2013



David Alexander
Appellate Defender

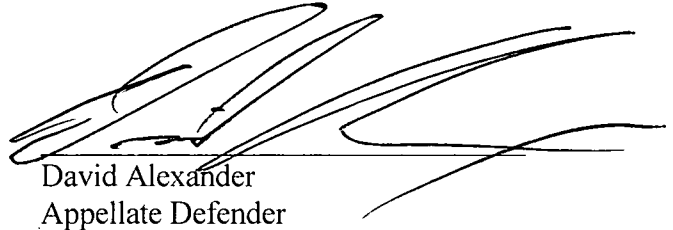
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Attorney for Appellant

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."

September 10, 2013



David Alexander
Appellate Defender

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Division of Appellate Defense
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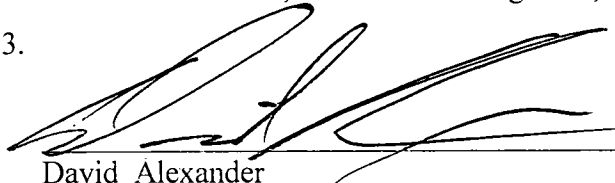
JAMES WATSON,

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CERTIFICATE OF SERVICE

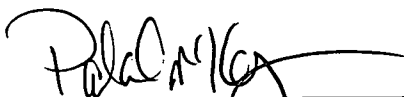
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record of Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on James Watson, 352843 at Lieber Correctional Institution, PO Box 205 Ridgeville, SC 29472 this 10th day of September, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of September, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.