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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

RECEIVED
AUG 29 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTONIO LAMONT ROBBINS

APPELLANT

APPELLATE CASE NO. 2016-000660

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) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in giving a coercive Allen charge after the jury said it was hopelessly deadlocked?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in cocaine, third offense, after a jury trial held before the Honorable John C. Hayes, III on March 16-17, 2016, in York County. A sentence of thirty (30) years was imposed. David Clayton Cook, Esquire was defense counsel. Jennifer Colton, Esquire and Teasa Weaver, Esquire were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in giving a coercive Allen charge after the jury said it was hopelessly deadlocked.

Appellant was accused of trafficking cocaine from the scene of a rental house in Clover, South Carolina. Crack was found in several bags in a pick-up truck and at two locations inside the house. Appellant testified that his girlfriend recently rented the house, the truck was hers, and he did not live in the house but stayed there a couple of nights. Appellant said he did not know anything about the crack. It was not his. (R. p. 270, line 3 – p. 272, line 4)

After the defense rested the jury was sent out to deliberate at 4:11 PM. At 6:05 PM the court came back in session to announce that it had received a note from the jury stating that they were hopelessly deadlocked and they did not see a verdict as possible even with further deliberation. The trial court stated that it was going to bring the jury back in and ask them to further deliberate by giving them an Allen charge.¹ (R. p. 347, line 11 – p. 348, line 14).

The charge given to the jury was as follows:

THE COURT: Mr. Foreman, and members of the jury, I've received a note that you are deadlocked at this time. I certainly appreciate you're communicating that with me. I instructed you earlier that, of course, your verdict has to be unanimous. However, I'm going to talk to you just for a few minutes.

When a matter is in dispute, it isn't always easy for even two people to agree, so, when twelve people must agree, it obviously becomes more difficult. In most cases, absolute certainty cannot be reached or expected. However, you have a duty to make every reasonable effort to reach a unanimous verdict.

In doing this, you can - - you should consult with one another, express your own views, and listen to the

¹ Allen v. United States, 164 U.S. 492, 17 S. Ct. 154 (1896).

opinions of your fellow jurors. Tell each other how you feel, and why you feel the way you do; discuss your differences with open minds. Although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree on must be your own verdict, the results of your own convictions, and you should not give up your firmly-held beliefs, merely to be in agreement with your fellow jurors.

Regardless, you should consider the minority's position, and the minority should consider the majority's position. You should carefully consider and respect the opinions of each other, and reevaluate your positions for reasonableness, correctness, and impartiality. You must lay aside all outside matters, and reexamine the questions before you, based on the law and the evidence that's been presented in the case.

If you do not agree on a verdict, I will have to declare a mistrial. In that case, it doesn't mean anybody wins. It just means that at some future time, myself or another judge and another jury, sitting where you are, will have to try the case at that - - will try the case at that time. The same participants will come. The same lawyers will basically ask the same questions and get the same answers. And probably, the same witnesses will be those who testify, and we'll go through this whole process again.

You were selected in the same manner and from the same source as any future jury, and there's no reason for me to believe that the case will even be submitted to twelve more intelligent, impartial, conscientious, and competent juries than are you, or, that more clearer evidence will be produced on one side or the other.

With that said, I'm going to ask you to continue to deliberate for some time, and see if you can't reach a unanimous verdict. Thank you.

JUROR NUMBER ONE SIXTY-NINE: God.

(R. p. 348, line 21 – p. 350, line 19)

The above charge has also been known as the “dynamite” or “hammer” charge because it does coerce a jury into reaching a verdict. An Allen charge should not be given in such a way that it singles out the minority jurors who are unable to agree on a verdict.

Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001). In this case the minority jurors were told that they should consider the majority's position. That violated due process.

CONCLUSION

Appellant's conviction should be reversed and he should be given a new trial.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of August, 2016.

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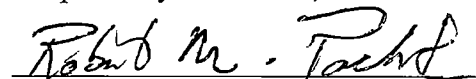
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antonio L. Robbins 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 John C. Hayes, which was held on March 16 -21, 2016, 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 Antonio L. Robbins.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 29th day of August, 2016.

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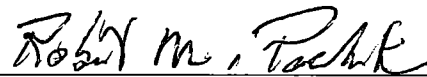
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript Dated March 16-17, 2016
- (2) True-billed indictments

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

August 29, 2016



Robert M. Pachak
Appellate Defender

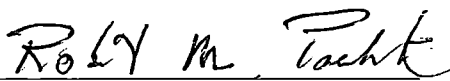
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Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 29, 2016.


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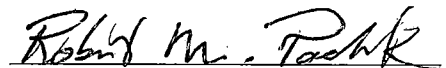
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APPELLANT

APPELLATE CASE NO. 2016-000660

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case has been served upon Benjamin J. Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal have been served on Antonio L. Robbins, 300579, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 29th day of August, 2016.




Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of August, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: March 1, 2026