

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

v.

ASHLEY LOUISE HAMMITT,

APPELLANT

APPELLATE CASE NO 2018-000093

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

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ORIGINAL

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RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Hammitt's motion for a directed verdict when the state did not prove beyond a reasonable doubt that a drug transaction had occurred because no drugs nor money were seen on the CI's DVD, and Appellant admitted that she was on the video but she did not distribute drugs because the CI took drugs from the hotel room?

STATEMENT OF THE CASE

On July 21, 2017, the Spartanburg County Grand Jury indicted Ashley Louise Hammitt on the charge of distribution of methamphetamine. On January 10, 2018, Appellant Hammitt proceeded to trial before the Honorable J. Derham Cole and a jury. Hammitt was represented by J. Roger Poole, and the state was represented by James Edward Hunter. R. 1. The jury found Hammitt guilty of the distribution of methamphetamine as indicted. R. 157, ll. 1 – 24. The judge sentenced Hammitt to fifteen years' incarceration on a distribution of methamphetamine third offense. R. 158, ll. 22 – R. 159, ll. 21; R. 163, ll. 1 – 17. Hammitt's trial counsel filed a notice of appeal. This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred in denying Appellant Hammitt's motion for a directed verdict when the state did not prove beyond a reasonable doubt that a drug transaction had occurred because no drugs nor money were seen on the CI's DVD, and Appellant admitted that she was on the video but she did not distribute drugs because the CI took drugs from the hotel room.

Relevant Facts

On October 6, 2016, Investigator John Shafer with the Spartanburg County Sheriff's Office met with a confidential informant (CI) named Brady Rhodes to set up a drug transaction at a local hotel. Investigator Schafer had used CI Rhodes to do drug buys in the past. CI Rhodes was receiving \$50 to do this drug buy. R. 47, ll. 1 – R. 50, ll. 10. Investigator Schafer fitted the CI with a watch which was a recording device for both video and audio. He gave the CI the money to purchase the drugs. The investigator along with another investigator followed the CI to the hotel and watched him enter. R. 51, ll. 1 – R. 56, ll. 23.

Brady Rhodes, the CI, was a heroin addict and began doing drug buys for the Sheriff's Department to work off charges. R. 64, ll. 23 – R. 65, ll. 24; R. 90, ll. 20 – R. 91, ll. 7. After, he did the drug buys to make money. R. 65, ll. 15 – 24. In order to set up a buy, Rhodes would call someone and ask what they were holding. Then he would tell them he was coming to buy an amount of drugs. R. 66, ll. 1 – 20.

In Hammitt's case, Rhodes arranged to buy a gram of methamphetamine from her for one hundred dollars. R. 67, ll. 1 – 4. On October 6, 2016, Rhodes met with law enforcement and was equipped with the recording device and one hundred dollars. R. 68, ll. 6 – 11. Rhodes went to the hotel and met with Hammitt. Rhodes identified Hammitt in the DVD and said that the DVD was

accurate in its depiction. He identified Hammitt during the trial in court. R. 69, ll. 1 – R. 71, ll. 25.

According to Rhodes, Hammitt did not have a full gram of methamphetamine but had only about twenty or thirty dollars worth. She went about the hotel trying to find more. However, Rhodes took the small amount of the drug, left the one hundred dollars, and left. He verified that Hammitt did not hand him the drug, and he had to pick it up. He also did not get any change from the one hundred. R. 72, ll. 22 – R. 76, ll. 22.

Rhodes took the drug to the investigators. R. 77, ll. 1 – 25. The grand jury indicted Hammitt on the charge of distribution of methamphetamine which was her third drug offense. R. 36, ll. 13 – 19; R. 5, ll. 1 – 8.

Hammitt testified at her trial on January 10, 2018. She admitted that it was her in the video as she did meet with Rhodes whom she had known. She had known him as a heroin addict. She met with him because she needed money to pay for a room as she had nowhere to stay. She believed that she could get money from Rhodes. She did not intend to sell drugs; she just wanted to pay for a room. R. 114, ll. 3 – R. 116, ll. 25. Hammitt said there were no drugs. However, she admitted taking Rhodes' money. R. 119, ll. 20 – R. 120, ll. 16.

Holly Tobias, the forensic chemist with the Spartanburg county Sheriff's Office, testified that the drug Rhodes received during this transaction was .03 grams of methamphetamine, a controlled II substance. R. 100, ll. 1 – 7; R. 107, ll. 1 – R. 108, ll. 2.

At the close of the state's case, defense counsel made a motion for a directed verdict. Counsel argued that this was not a distribution case. Counsel explained that the CI Rhodes took the drugs from inside the hotel room where Hammitt stole money from the CI. Counsel argued

that there was no distribution of drugs on Hammitt's part. The judge denied the directed verdict motion finding there was sufficient evidence for it to be a jury issue. R. 110, ll. 1 – 24.

In his closing to the jury, defense counsel argued that they did not see anything about drugs in the video of the transaction, and they did not see any money in the video. R. 132, ll. 15 – R. 133, ll. 25.

The jury returned a verdict of guilty of distribution of methamphetamine for Hammitt. The judge sentenced her to fifteen years in prison. R.157, ll. 1 – 24; R. 163, ll. 1 – 17.

Discussion

On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).; State v. Phillips, 416 S.C. 184, 785 S.E.2d 448 (2016).

Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error. State v. Arnold, *supra*. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Young, 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018), reh'g denied (Sept. 20, 2018)

In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. State v. Phillips, 416 S.C. 184, 785 S.E.2d 448 (2016).

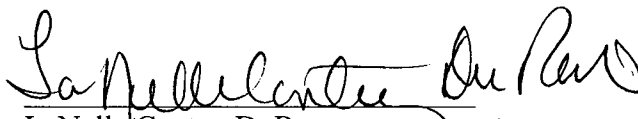
When the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” State v. Odems, 395

S.C. 582, 586, 720 S.E.2d 48, 50 (2011). In Odems, the Supreme Court addressed the substantial circumstantial evidence issue. At trial, the State presented three pieces of circumstantial evidence: (1) less than ninety minutes after the burglary, police located the defendant in the get-away vehicle with the burglars and the stolen goods; (2) the defendant fled from law enforcement; and (3) the defendant asked an uninvolved person to lie to authorities on his behalf. Id. at 588, 720 S.E.2d at 51. The Supreme Court found that even when viewed in the light most favorable to the State, the circumstantial evidence did not reasonably tend to prove the defendant's guilt.

Hammitt's case is similar to Odems in that the evidence was primarily based on the word of the CI who admitted that he was still a heroin addict. He testified that he owed Hammitt \$40 for "fronting" him methamphetamine the year before. The video did not show an actual transaction. There were no other witnesses. Therefore, the evidence was basically circumstantial, and only raised suspicion of Hammitt's guilt.

CONCLUSION

Based on the above, Appellant's conviction and sentence should be reversed, and her case remanded for the entry of a directed verdict.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of November, 2018.

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Honorable J. Derham Cole, Circuit Court Judge

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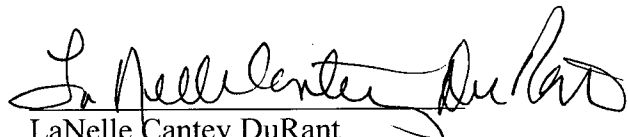
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ashley Louise Hammitt states:

1. She is 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 J. Derham Cole, which was held on January 10, 2018, 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 Ashley Louise Hammitt.

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

This 26th day of November, 2018.

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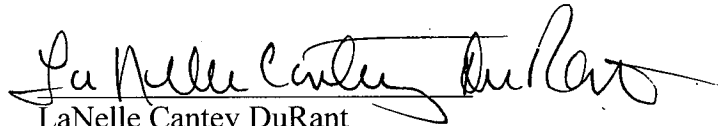
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Sentencing sheet
- (3) Trial Transcript January 10, 2018.

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

November 26, 2018


LaNelle Cantey DuRant
Appellate Defender

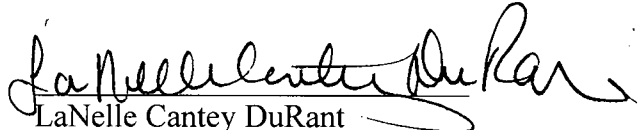
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ATTORNEY FOR APPELLANT

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 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."

November 26, 2018.


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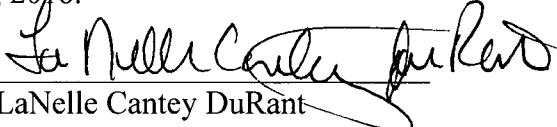
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ASHLEY LOUISE HAMMITT,


APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Ashley Louise Hammitt, 362283, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 26th day of November, 2018.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2018.



Notary Public for South Carolina
My Commission Expires: September 27, 2028.