THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Indictment No. 2009-GS-40-5780

State of South Carolina

Respondent,

v.

Myron Samuels

Appellant,

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. **DID THE COURT ERR BY REFUSING TO QUASH THE INDICTMENT ALLEGING TWO SEPARATE OFFENSES IN A SINGLE COUNT?**

II. **DID THE LOWER COURT ERR BY ENTERING JUDGMENT AND SENTENCING SAMUELS FOR AHAN RATHER THAN FOR SIMPLE ASSAULT?**

STATEMENT OF THE CASE

Appellant Myron Samuels hereinafter "Samuels" was arrested on July 7, 2009 on a warrant charging him with assault with intent to kill (AWIK) arising out of an incident occurring on April 14, 2009 within the city limits of Columbia, South Carolina. (R. 323-324) Samuels was arraigned and released on a personal recognizance bond. (R.325) Subsequently, on December 17, 2009, Samuels was indicted for AWIK in violation of S.C. Code Ann. § 17-25-30. The indictment alleged

> [T]hat Myron Samuels did in Richland County on or about April 14, 2009, with malice aforethought commit an assault with intent to kill upon the victim, Patricia Speaks and/or Carla Daniels, in violation of Section 17-25-30 C/L, Code of Law South Carolina. Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

(R. 326)

This case was called to trial before the Honorable Clifton Newman on January 12, 2011. After jury selection and prior to the jury being sworn, Samuels moved to dismiss the indictment or in the alternative requested that the charges be severed on the grounds that the indictment charged two separate offenses. The Court denied Samuels Motion to Dismiss and Motion for Severance. (R. 9-18)

At the conclusion of the trial, the jury returned a verdict finding Defendant Samuels guilty of simple assault as to the alleged victim Patricia Speaks and guilty of assault of a high

and aggravated nature (AHAN) as to the alleged victim Carla Daniels. (R. 330) The Court took Defendant Samuels into custody and delayed the sentencing hearing until January 27, 2011. At the sentencing hearing, Samuels argued that he should be sentenced for the misdemeanor conviction, rather than the conviction of AHAN under the rule of lenity, since the single count indictment charged two separate offenses. (R. 316-317) Judge Newman sentenced Samuels to a term of 10 years suspended provided that upon service of time served, the balance was suspended with probation of three years and Samuels was further ordered to participate in six months of intensive anger management treatment, prohibited from having contact with the victims and is required to perform 200 hours of community service. (R. 1; R. 327-330)

On February 7, 2011, Samuels filed and served a Notice of Appeal. (R. 2-3)

STATEMENT OF FACTS

At the time of his arrest, Samuels was fifty years old, divorced, and was the Director of Campus Services at South Carolina State University. He lived in Orangeburg, South Carolina. Samuels was also romantically involved with two separate women, Carla Daniels and Patricia Speaks. (R. 234-243; 248-254)

Around 5 or 6 p.m. on the evening of April 14, 2009, Samuels was visiting with Patricia Speaks at her home located within the city limits of Columbia, South Carolina. Carla Daniels came to Ms. Speaks' residence unannounced and knocked on the door. Samuels opened the door and invited Ms. Daniels into the residence. Ms. Speaks was in the shower at the time. Once Ms. Speaks got dressed, she entered the den and briefly spoke with Ms. Daniels. Ms. Daniels then excused herself from the residence to go to her car to roll up the windows and lock the doors, as she had left the car unsecured. Samuels testified at trial that when Ms. Daniels went to her car, Ms. Speaks went to her bedroom to retrieve a handgun in fear that Ms. Daniels was about to

engage in violent behavior. Ms. Daniels returned to the residence and engaged in a discussion with Ms. Speaks while the three of them were in Ms. Speaks' den. (R. 267-270)

In the course of the conversation, Ms. Speaks became angry and agitated and started walking toward the part of the house where the handgun was located. Samuels testified that he became concerned for his safety, Ms. Speaks' safety and Daniels' safety so he got up and retrieved the handgun. Speaks had previously sent Samuels an e-mail stating that she would put "a cap in his ass" if he was not faithful to her. Speaks had also sent Samuels an e-mail which indicated to Samuels that she was suicidal. Samuels was also aware that Daniels possessed a handgun. Samuels testified that he personally did not own a handgun. (R. 172-174; 180-181; 270, 288)

Samuels testified that once he secured the handgun, he put the clip in his pocket and started to leave the house. Before leaving, he admonished Ms. Daniels about the dangers of coming into someone's home unannounced because of the potential for injury. As Samuels was leaving, Ms. Speaks chased after him attempting to get her gun. Ms. Speaks grabbed at Mr. Samuels and as Samuels pulled away Ms. Speaks fell to the floor. (R. 286-288)

When Samuels initially took possession of Speaks' gun, Speaks called 911 and spoke to a Richland County Sheriff's Deputy. After Samuels left Speaks' residence, Speaks called 911 again. Subsequently an investigating officer with the City of Columbia Police Department arrived at the scene and prepared an incident report. The investigating officer prepared an incident report which set forth the version of events as reported by Ms. Speaks and Ms. Daniels. The version contained in the incident report contradicted the trial testimony of both Speaks and Daniel. (R. 20-24; 97-98) In addition, shortly after the incident, both Speaks and Daniels informed the investigating officer that they did not wish to press charges. However, a few weeks

later, Daniels had a change of heart, and contacted an investigator with the City of Columbia seeking to press charges.

Daniels provided a statement to the investigator claiming that Samuels pressed the handgun to her forehead and pulled the trigger. At trial, Daniels testified that she observed the barrel of the gun against her head and saw Samuels press the trigger a ¼ to ½ an inch. Daniels had given two earlier statements that contradicted the last statement she provided to the investigator and all three statements contradicted her trial testimony. (R. 94-95; 99-103; 104-105)

Speaks testified at trial that the locking mechanism on the handgun was turned to safety. The handgun had a separate key lock system and the key was located in a separate part of the house from the gun. (R. 185-188) The City of Columbia investigator upon cross-examination admitted that the trigger cannot be pressed a ¼ or ½ an inch with the locking mechanism turned to safety. Speaks also testified that Samuels waved the gun toward her and threatened "do you want some of this." (R. 220-221)

ARGUMENT

I. The Trial Court Erred By Refusing To Quash The Indictment Alleging Two Separate Offenses in A Single Count.

Prior to the jury being sworn, Samuels moved to dismiss the Indictment because it alleged two separate offenses in a single count. The trial court denied this motion. The lower court erred.

A single count indictment alleging two separate offenses is duplicitous and should be quashed upon motion made prior to the jury being sworn. State v. Parker, 344 SC 245, 255, 543 S.E.2d 255, 257 (Ct. App. 2001). In State v. Parker the Court explained,

> Distinct offenses may be charged in separate counts of the same indictment. State v. Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct.App.1996) (citing State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955)). However, two separate offenses cannot, ordinarily, be charged in a single-count indictment unless one is a lesser included offense of the other. State v. Fennell, 263 S.C. 216, 209 S.E.2d 433 (1974).

344 S.C. at 255, 543 S.E. 2d at 257.

To prove AWIK, the State is required first to prove an assault. Assault is "defined as an unlawful attempt or offer to commit a violent injury upon the person of another, coupled with a present ability to complete the attempt or offer by a battery." State v. Mims, 286 S.C. 553, 554, 335 S.E.2d 237, 237 (1985). Here, the Indictment alleges that Samuels committed an assault upon "Patricia Speaks and/or Carla Daniels." (Indictment)One interpretation of this Indictment is that the Grand Jury returned a true bill as to both victims, Speaks and Daniels. Under this reading, the Indictment charges two offenses in a single count. This is the interpretation advanced by the State at trial and adopted by the trial court. At trial the State sought to prove that Samuels was guilty of two separate offenses. Furthermore, the trial judge submitted a jury verdict form where the jury returned separate verdicts for each alleged victim. The trial court erred by refusing to dismiss this duplicitous indictment. As a result the conviction must be vacated. *See* State v. Howe, 1 Rich 260 (1845).

Moreover, the plain language of the Indictment allowed the Grand Jury to choose between either Speaks or Daniel as the victim. The Indictment was returned with a True Bill.Under this Indictment, a true bill could mean one of three things: (i) a true bill as to victim Speaks; (ii) a true bill as to victim Daniels; or (iii) a true bill as to both. The lower court concluded without any justification that the Grand Jury returned a true bill as to both victims. However, there was simply no basis for this conclusion. Furthermore, since it was not clear from

the Indictment that the Grand Jury indicted Samuels for both assaults, the trial court lacked jurisdiction to try Samuels for both. *See* Joseph v. State, 351 S.C. 551, 571 S.E.2d 280 (2002) (holding the Circuit Court does not have subject matter jurisdiction to convict a defendant of an offense unless there is an indictment which sufficiently states the offense.) The Court thereby erred by convicting Samuels and sentencing him on either charge.

II. The Lower Court Erred By Entering Judgment and Sentencing Samuels For AHAN Rather Than For Simple Assault.

As noted above, there is nothing in the record to support the lower court's conclusion that the Grand Jury returned a true bill as to both charges contained in the single count indictment. The Petit Jury convicted Samuels of the lesser included misdemeanor offense of simple assault as to Speaks and the lesser offense of AHAN as to Daniels. Because there is ambiguity in the Indictment regarding which offense the Grand Jury issued a true bill for, the trial court was required to apply the rule of lenity and sentence Samuels on the lesser of the two charges. *See* Bryant v. State, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009) (When a *genuine* ambiguity exists as a result of the proposed application of [a statute] to a given situation, the rule of lenity requires that the doubt must be resolved in the defendant's favor) (emphasis in original); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) (recognizing the settled rule that penal statutes must be strictly construed in the defendant's favor); *See also*, U.S. v. Sturdivant, 244 F.3d 71 (2d Cir. 2001) (holding District Court must give the Defendant the benefit of the doubt and sentence him to the lesser offense, when charged with a duplicitous indictment.)

Here, the trial court entered judgment against Samuels for AHAN. AHAN is a common law misdemeanor that carries a maximum sentence of 10 years. *See* State v. Hill, 254 S.C. 321, 331, 175 S.E.2d 227, 232 (1970). Judge Newman therefore sentenced Samuels to a 10 year term of imprisonment, provided that upon service of time served, the balance was suspended with

probation of three years and Samuels was further ordered to participate in six months of intensive anger management treatment, prohibited from having contact with the victims and is required to perform 200 hours of community service.(Sentencing Sheet and Judgment). This sentence exceeds the maximum allowable for simple assault which is 30 days and a fine of $500. State v. Fennell, 340 S.C. 266, 274, 531 S.E.2d 512, 516 (2000) (simple assault and battery is a misdemeanor within jurisdiction of magistrate's court, with a maximum penalty of $500 or thirty days imprisonment).

As a result, this Court should vacate the judgment of AHAN and the resulting sentence and remand this case to the lower court with instructions to enter judgment for simple assault and to impose a sentence for this offense.

CONCLUSION

Samuels requests that the judgment entered against him for AHAN and the resulting sentence be vacated and the case remanded with instructions to enter judgment on the verdict of simple assault.

Respectfully Submitted,

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June 6, 2012

Columbia, South Carolina

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Appellant's Final Brief complies with Rule 211(b) SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

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PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis Babcock & Griffin L.L.P, attorney for Appellant, do hereby certify that I have served a copy of Appellant's Final Brief on Appeal on June 6, 2012, by causing a copy of same to be deposited in the U.S. Mail, proper postage prepaid addressed as follows:

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