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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARL EUGENE VALENTINE, JR.,

APPELLANT.

APPELLATE CASE NO. 2024-000877

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow the jury to recess for the night and resume deliberations in the morning, as requested by a juror, when deliberations did not begin until 6:00 PM and the trial was lengthy with numerous witnesses and many exhibits?

STATEMENT OF THE CASE

In March of 2024, the Saluda County Grand Jury indicted Appellant, Earl Eugene Valentine, Jr., for murder and possession of a weapon during the commission of a violent crime, indictments #2024-GS-41-00001, 00002. (R. p. **). On March 11, 2024, Appellant proceeded to jury trial before the Honorable Debra R. McCaslin. Robert Williams and Anna Yonge represented Appellant at trial. Suzanne Mayes¹ and Douglas Fender prosecuted the case. The jury returned verdicts of guilty as charged. Judge McCaslin sentenced Appellant to fifty-five (55) years for murder and five (5) years concurrent for the weapon charge. Appellant timely filed a motion for new trial and the motion was denied on May 23, 2024. A timely notice of intent to appeal was served on May 29, 2024. This appeal follows.

¹ The transcript incorrectly refers to the prosecutor as Suzanne Mayer. This is one of many typographical errors contained throughout this trial transcript.

STANDARD OF REVIEW

“The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct.App.2002).” State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

ARGUMENT

The trial judge erred in refusing to allow the jury to recess for the night and resume deliberations in the morning, as requested by a juror, when deliberations did not begin until 6:00 PM and the trial was lengthy with numerous witnesses and many exhibits.

Appellant's trial for murder and possession of a weapon during the commission of a violent offense started on Monday March 11, 2024. Over the next four days the State called seventeen witnesses and introduced in evidence approximately ninety-five exhibits. The record fails to reflect what time the jury began deliberations but prior to receiving the evidence the jury sent out several notes. (Tr. p. 680, lines 20-25, Court's Exhibits #15, #16, #17 – R. pp. **). In one of the notes a juror told the judge, "My significant other has staff duty tonight and I do not have childcare arrangements made past 1900." (Tr. p. 680, lines 24-25). In response counsel for Appellant told the judge, "And so I understand, but my concern is for my client that he - - his case is not going to be given due respect that it deserves based on these additional pressures. And I don't know how we fix it." (Tr. p. 681, line 23 – p. 682, line 1).

Based on an earlier incident involving a juror's husband being present in the courtroom during a proffer, the judge had decided to sequester the jury. (Tr. p. 523, line 6 – p. 524, lines 1-23). While the judge and the attorneys were discussing how to deal with the juror with childcare issues, the judge received another note from a juror. (Tr. p. 682, line 2 – p. 683, lines 1-23). In this note the juror told the judge, "Your Honor, based on the amount of evidence presented during this case, much of which I feel I need to review, I would prefer to start fresh in the morning. We are tired and hungry. Also, my mom is 88 and I need to get home before too late." (Tr. p. 683, lines 14-18).

Counsel for Appellant argued that the jury was under improper pressure. (Tr. p. 684, lines 24-25). The State disagreed arguing, "How is it improper pressure? I mean, I – I –I

disagree. It's 6:00 and they have the evidence, they have the opportunity to deliberate now." (Tr. p. 685, lines 2-4). Counsel for Appellant responded, "They just asked to leave." (Tr. p. 685, line 5). The judge then asked the jury to quit deliberating so that the juror with childcare issues could make arrangements. (Tr. p. 687, line 15 – p. 688, 689, lines 1-7). Once the childcare arrangements were made the juror returned to the jury room. (Tr. p. 689, lines 8-9). It appears that the judge then answered the other jury questions and asked the jury to continue with deliberations. (Tr. p. 689, lines 11-23). The record fails to reflect what time this took place but it had to be after 6:00 PM based on the prosecutor's earlier comment. The judge stated, "I am going to let them go for a little while. We'll see about dinner." (Tr. p. 698, lines 24-25). The judge also noted that the jury requested and were allowed to watch a video from a gas station that had been admitted in evidence. (Tr. p. 690, line 8 – p 691, lines 1-1-24).

The record fails to reflect the time but at some point the jury returned with verdicts of guilty. (Tr. p. 692, lines 1 – 25). The record reflects that sentencing concluded at 8:52 PM. (Tr. p. 703, lines 14-15). The trial judge erred in refusing to allow the jury to recess for the night and resume deliberations in the morning, as requested, when deliberations did not begin until 6:00 PM and the trial was lengthy with numerous witnesses and many exhibits. The refusal to recess for the evening, as requested, resulted in a coerced verdict.

In the context of an Allen charge South Carolina Appellate courts have held that while a trial judge has a duty to urge the jury to reach a verdict, the trial judge must not coerce the verdict. State v. Pauling, 322 S.C. 95, 470 S.E.2d 106, 108–09 (1996); State v. Singleton, 319 S.C. 312, 460 S.E.2d 573, 575–76 (1995). In the present case the judge's refusal to recess and continue the proceedings to the next morning, as requested by the tired and hungry jury, is the

equivalent of, if not worse than, the judge giving a coercive Allen charge. The refusal constitutes an abuse of discretion as an error of law. The error requires reversal.

The present case is distinguished from State v. Gleaton, 444 S.C. 394, 906 S.E.2d 630, (Ct. App. 2024), where the Court of Appeals found no error in the trial judge's decision to continue with the trial rather than recess for the evening. Critically, the jury in Gleaton was given a choice about whether to proceed or recess and chose to proceed. In Gleaton the Court of Appeals wrote:


The record demonstrates the circuit court allowed the jury to decide whether to proceed or recess to another day for closing arguments, the court's charge, and deliberations. We agree with the circuit court's recognition that asking a jury's preference and then continuing the trial at its request "is not uncommon" and circuit courts "do this all the time." Although Gleaton argues "[t]he forced deliberations resulted in a coerced verdict," he has made no showing that he was prejudiced by the circuit court's refusal to delay the proceedings. Thus, we find the circuit court did not err in continuing with the trial pursuant to the jury's request.

Gleaton, 444 S.C. at 424, 906 S.E.2d at 646. See also State v. Ayers, 284 S.C. 266, 325 S.E.2d 579 (Ct. App. 1985) (Finding that the verdict was not coerced because, among other reasons, the jury asked to continue to deliberate).

The forced deliberations in the present case, when the jury asked to recess, resulted in a coerced verdict. The jury could not have considered all of the testimony and evidence presented during this four-day trial in the approximate two hours of deliberations. While the judge did not threaten to keep the jury in the jury room all night as in State v. Simon, 126 S.C. 437, 120 S.E. 230 (1923), the jury was unaware of how long they would be required to stay and deliberate after asking for and being refused a recess. The coerced verdict requires reversal.

CONCLUSION

Based on the above argument, this Court should reverse the convictions and remand for a new trial.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2025.

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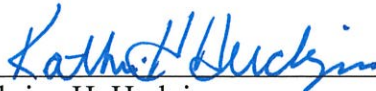
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Earl Eugene Valentine 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 Debra R. Mccaslin, which was held on March 11-14, 2024, 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 Earl Eugene Valentine.

Respectfully Submitted,


Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2025.

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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 indictments and sentencing sheets;
- (2) Complete trial transcript pp. 1-704;
- (3) Memorandum in Support of Identity Evidence;
- (4) Defendant's Memorandum in Opposition to State's Motion for Admission of Identity Evidence;
- (5) Motion for New Trial;
- (6) Order Denying Motion for New Trial
- (7) Court's Exhibits #15, #16, #17 - Juror Notes.

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


Kathrine H. Hudgins
Senior Appellate Defender

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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."



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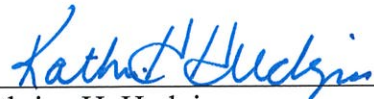
EARL EUGENE VALENTINE, JR.,

APPELLANT.

APPELLATE CASE NO. 2024-000877

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Earl Eugene Valentine, #393590, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of February, 2025.



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ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: [SC - BROWN MELODY; abennett@scag.gov](#)
Cc: [Hudgins, Kathrine](#)
Subject: 2024-000877 - Earl Eugene Valentine - Anders Brief of Appellant
Date: Monday, February 3, 2025 4:17:00 PM
Attachments: [2024-000877 - Earl Eugene Valentine - Anders Brief of Appellant.pdf](#)
[2024-000877 - Earl Eugene Valentine - Anders Brief of Appellant - AG Cover Letter.pdf](#)

Ms. Brown,

Please find attached for service the Anders Brief of Appellant & Designation of Matter for Earl Eugene Valentine's appeal which will be filed today with the Court of Appeals.

Thank you.
Chris

Chris Stock
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