

20720

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Honorable Edgar Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

HENRY HAYGOOD,

APPELLANT.

Appellate Case No. 2012-211961

RECORD ON APPEAL

BREEN R. STEVENS
First Circuit Public Defender Office
P.O. Box 1112
Orangeburg, SC 29116
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Attorney for Appellant

ALAN WILSON
Attorney General

JULIE KATE KEENEY
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Attorneys for Respondent

RECEIVED

OCT 13 2013

SC Court of Appeals

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2010-CP-38-00314

STATE OF SOUTH CAROLINA)

IN THE CIRCUIT COURT

COUNTY OF ORANGEBURG)

STATE OF SOUTH CAROLINA)

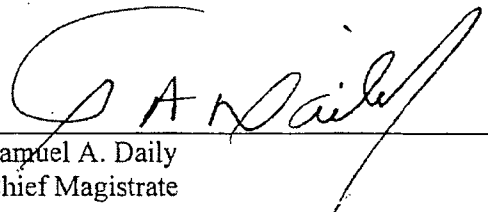
WARRANT NO: K-238481

V.)

HENRY HAYGOOD)
421 TECZA DRIVE)
ORANGEBURG, SC 29115)

RETURN

APPELLANT)

2010 AUG 18 1P 3:20
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

Samuel A. Daily
Chief Magistrate

January 11, 2009

STATE OF SOUTH CAROLINA
COURT

IN THE CIRCUIT

COUNTY OF ORANGEBURG

WARRANT NO: k-238481

THE STATE OF SOUTH CAROLINA

MAGISTRATE'S RETURN
OF CRIMINAL APPEAL

V.

HENRY HAYGOOD
421 TECZA DRIVE
ORANGEBURG, SC 29115
DEFENDANT

2010 AUG 18 1 P 3 21
FILED FOR RECORD
VIRNITA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

THIS MATTER IS ON APPEAL FROM REGIONAL MAGISTRATE
CRIMINAL DOMESTIC VIOLENCE COURT OF ORANGEBURG COUNTY,
SOUTH CAROLINA, THE HONORABLE JUDGE SAMUEL A. DAILY,
PRSIDING JUDGE.

THE DEFENDANT, HENRY HAYGOOD, WAS CHARGED WITH
VIOLATING S.C. CODE ANN. 16-25-0065, WHICH IS COMMONLY
REFERRED TO AS CRIMINAL DOMESTIC VIOLENCE HIGH &
AGGRAVATED NATURE (CDVHAN), ON APRIL 1, 2008.

ON JUNE 8, 2009 THE CHARGE WAS REMANDED AND CHARGED WITH
VIOLATING S.C. CODE ANN. 16-25-0020, WHICH IS COMMONLY REFERRED
TO AS CRIMINAL DOMESTIC VIOLENCE 1ST. (CDV 1ST.)

ON JUNE 22, 2009 A JURY TRIAL WAS REQUESTED BY ASSISTANT PUBLIC
DEFENDER, JILLIAN D. ULLMAN ON BEHALF OF DEFENDANT.

ON SEPTEMBER 4, 2009 THE REQUEST FOR A JURY STRICKING AND JURY
TRIAL WAS CANCELED AND THE REQUEST WAS MADE FOR A BENCH
TRIAL.

THIS MATTER WAS HEARD IN A BENCH TRIAL ON SEPTEMBER 25,
2009 AND THE NOTICE OF APPEAL FILED ON OCTOBER 2, 2009.

THE PROCEEDINGS WERE:

{ X } RECORDED ELECTRONICALLY.

LIST OF STATES WITNESS (ES):

(1) LT. LACRA JENKINS (ORANGEBURG COUNTY SHERIFF'S OFFICE)

LIST OF DEFENDANT'S WITNESS (ES):

1. THE DEFENSE OFFERED NO WITNESS, TESTIMONY OR EVIDENCE AT TRIAL.

A SUMMARY OF THE STATE'S WITNESS TESTIMONY AT TRIAL:

1. THE STATED CALLED LT. LACRA JENKINS AS THE ONLY WITNESS PRESENT FOR THE ABOVE TRIAL. AFTER BEING PUT UNDER OATH, TESTIFIED AS TO WHAT TOOK PLACE DURING HIS INITIAL INVESTIGATION AFTER HE RESPONDED TO AN ALLEDGED CDV CALL AT 421 TECZA DRIVE, ORANGEBURG, SC 29115 ON MARCH 31, 2008. UPON ARRIVAL HE STATED THAT THE VICTIM TOWANNA HAYGOOD WAS VERY UPSET. DURING HIS INVESTIGATION HE STATED THAT THE ALLEDGE VICTIM, TOWANNA HAYGOOD STATED TO HIM THAT HER HUSBAND BEGIN FIGHTING HER IN THE BEDROOM AND HE STATED TO HER THAT HE WAS GOING TO KILL HER. LT. JENKINS THEN TESTIFIED THAT MRS. HAYGOOD STATED THAT MR. HAYGOOD WENT TO THE BEDROOM CLOSET AND RETRIEVED A BROWN IN COLOR SHOTGUN AND THAT HER 14 YEARS OLD SON STRUGGLE WITH HIM TO TAKE THE SHOTGUN AWAY FROM HIM. MRS. HAYGOOD THEN TOLD HIM THAT MR. HAYGOOD REACHED IN HIS PANTS POCKET WHERE HE KEEPS A SMALL HANDGUN AT TIMES. SHE THEN GRABED HIS PANTS POCKET CAUSING SOME SMALL BULLETS TO FALL TO THE FLOOR. SHE STATED TO HIM THAT MR. HAYGOOD THEN WENT OUTSIDE THE RESIDENT BUT CAME BACK AND PUNCH A HOLE IN THE BEDROOM CLOSET. LT. JENKINS STATED THAT WHEN HE ARRIVED ON THE SECENE HE OBSERVED MR. HAYGOOD BEING HIGHLY INTOXICATED. WHEN HE TRIED TO TALKING TO HIM HE BEGIN USING PROFANITY, STATING THAT THIS WAS HIS HOUSE AND THAT HE WOULD DO ANYTHING HE WISHES. LT. JENKINS FURTHER TESTIFIED THAT HENRY AND TOWANNA HAYGOOD WERE MARRIED AT THE TIME OF THE INCIDENT AND HAS A CHILD IN COMMON.

THE DEFENDANT MADE THE FOLLOWING MOTIONS OR OBJECTIONS THROUGH HIS ATTORNEY:

1. DURING THE TRIAL OBJECTIONS WERE MADE BY THE DEFENSE ATTORNEY AS TO THE STATE'S INTRODUCTION OF VERBAL STATEMENTS MADE BY THE ALLEDGED VICTIM TO THE INVESTIGATING OFFICER.
2. OBJECTED TO STATEMENTS PRETAINING TO ALLEGATIONS OF WHAT THE DEFENDANT'S DID ON THE DATE OF QUESTION.

A SUMMARY OF THE STATES' POSITION ON EACH MOTION:

1. THE STATE ARGUMENT TO THE MOTION IS THAT, THE OFFICER WAS DISPATCHED TO AN ALLEDGED CRIMINAL DOMESTIC VIOLENCE INCIDENT AND DID FOLLOWING PROCEDURE AS IT RELATES TO THE CDV STATUE IN SOUTH CAROLINA. HIS DUTY WAS TO DO AN INVESTIGATION OF THE INCIDENT AND BE PREPARED TO TESTFY AS TO THE FACTS (DURING HIS INVESTIGATION) AT TRIAL.
2. THE STATE ARGUED THAT THE ALLEGED INCIDENT WAS A PART OF THE OFFICE'S INVESTIGATION IS ANY CDV CASE IN SC AND THAT THIS WA AN ACT OF EXCIDED UTTERANCE AND WAS NOT AN EXCEPTION TO THE HEARSAY RULE.

THE COURT'S RULING TO THE MOTIONS ARE AS FOLLOWS:

1. THE COURT OVERRULED THE DEFENDANTS OBJECTIONS AND AGREED WITH THE STATE THAT IN SOME CRIMINAL DOMESTIC VIOLENCE THE INVESTIGATING OFFICER OF THE ALLEDGED INCIDENT SHOULD BE ALLOWED TO TESTIFY AS TO THE FINDING OF FACTS DURING HIS INVESTIGATION.

THE STATE OFFERED THE FOLLOWING ITEMS INTO EVIDENCE:

1. ONE BROWN IN COLOR SHOTGUN AS STATES EXHIBIT #1 AND TAGGED AS ITEM # 2008-004815.
2. TESTIMONY OF LT. LACRA JENKINS OF THE ORANGEBURG COUNTY SHERIFF'S OFFICE.
3. _____
4. _____
5. _____

THE DEFENDANT RAISED THE FOLLOWING OBJECTIONS OF THE ITEMS THAT STATE SOUGHT TO INTRODUCE INTO EVIDENCE:

1. THE DEFENSE RAISED NO OBJECTIONS AS TO THE SHOTGUN BEING INTRODUCED INTO EVIDENCE.
2. THE DEFENSE OBJECTED TO THE STATE VERBAL STATEMENT OF THE INVESTIGATING OFFICER.
3. THE DEFENSE OBJECTED TO THE STATEMENT PRETAINING TO WHAT THE ALLEGEDLY DID ON THE DATE OF QUESTION.
4. _____
5. _____

THE STATE RAISED THE FOLLOWING OBJECTIONS TO THE ITEMS THAT THE DEFENDANT SOUGHT TO INTRODUCE INTO EVIDENCE:

1. THE DEFENSE INTRODUCED NO EVIDENCE.
2. _____
3. _____
4. _____

A SUMMARY OF THE STATE'S AND DEFENDANT'S POSITION AND THE COURT'S RULING ON THE OBJECTION IS ATTACHED.

THE DEFENDANT WAS FOUND GUILTY OF VIOLATING S.C. CODE ANN. 16-25-0020, COMMONLY KNOWN AS CRIMINAL DOMESTIC VIOLENCE 1ST. (CDV 1ST), AND THE COURT IMPOSED THE FOLLOWING SENTENCE:

30 DAYS IN JAIL OR \$2,130.00 SUSPENDED UPON COMPLETION OF THE CASA BATTERER'S INTERVENTION PROGRAM.

THE DEFENDANT THROUGH HIS ATTORNEY REQUESTED TO SERVE THE 30 DAYS SENTENCE ON THE WEEKEND AND TO BE (CREDITED WITH 7 DAYS). ALSO, SENTENCING WAS TO BEGIN IN 30 DAYS FROM 9/25/09 WAS **"GRANTED"**.

ON OCTOBER 23, 2009 AN ORDER STAYING SENTENCE WAS FILED BY THE DEFENDANT'S ATTORNEY AND **"GRANTED"** BY THE COURT.

ATTACHED ARE COPIES OF THE ITEMS WHICH ARE CHECKED.

{ X } ARREST WARRANT NO. K-238481 AND ALL BONDING PROCEEDING PAPERS.

{ X } COURT DISPOSITION SHEET

{ X } LIST OF WITNESS AND A SUMMARY OF THEIR TESTIMONY.

{ X } LIST OF MOTIONS, A SUMMARY OF THE PARTIES' POSITIONS, AND THE COURT'S RULING.

{ X } LIST OF ITEMS OFFERED INTO EVIDENCE, A SUMMARY OF OBJECTIONS, AND THE COURT RULING.

{ X } EXHIBITS PUT INTO RECORD.

{ X } THE NOTICE OF APPEAL.

{ X } ACCEPTANCE OF SERVICE

{ X } WRIT OF MANDAMUS

{ X } ORDER STAYING SENTENCE

K- 238481

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

THE STATE 2008004815
against

HENRY HAYGOOD (III)

Address: 421 TECZA DRIVE

ORANGEBURG SC 29115

Age: _____ SSN: _____

M Race: B Height: 5 Weight: 245

State: _____ DL#: _____

D: 10/31/72 Agency ORI#: _____

Executing Agency: SHERIFF'S DEPARTMENT

Executing Officer: DEP. L JENKINS

Offense: CRIMINAL DOMESTIC

Violence High & Offense Code: 2390

Ordinance Sec: 16-25-0065

Warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality of _____

The accused
to be arrested and brought before me to be
in with according to law.

Signature of Judge (L.S.)

RETURN

Copy of this arrest warrant was delivered to
defendant HENRY HAYGOOD (III)

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORANGEBURG MAGISTRATES 1 DOREMUS

P.O. BOX 9000

ORANGEBURG SC 29116

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant DEP. L JENKINS who
being duly sworn deposes and says that defendant HENRY HAYGOOD (III)
did within this county and state on 3/31/08

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of ORANGEBURG COUNTY)
in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL DOMESTIC VIOLENCE HIGH &
AGGRAVATED NATURE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MARCH 31, 2008 BETWEEN 2100 HRS AND 2140 HRS,
LOCATED AT 421 TECZA DRIVE, ORANGEBURG, SC ONE HENRY HAYGOOD, III
DID COMMIT THE CRIME OF CRIMINAL DOMESTIC VIOLENCE HIGH AND
AGGRAVATED NATURE IN THAT HE DID PULL THE VICTIM, TAWANNA HAYGOOD
OFF THE BED WHILE YELLING THAT HE WAS GOING TO KILL THE VICTIM.
DEFENDANT RETRIEVED A BROWN IN COLOR SHOTGUN, SERIAL # 110724,
FROM THE BEDROOM CLOSET. THE VICTIM WAS ABLE TO WRESTLE THE
SHOTGUN AWAY FROM THE DEFENDANT BEFORE HE COULD DISCHARGE IT. THE
VICTIM AND DEFENDANT ARE MARRIED. THIS INCIDENT OCCURRED IN THE
COUNTY OF ORANGEBURG, STATE OF SOUTH CAROLINA.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ORANGEBURG COUNTY

Affiant's Address P.O. BOX 9000

ORANGEBURG SC 29115

Affiant's Telephone 803 531-4647

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 3/31/08 defendant HENRY HAYGOOD (III)
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of ORANGEBURG COUNTY) as set forth below:

DESCRIPTION OF OFFENSE: CRIMINAL DOMESTIC VIOLENCE HIGH &
AGGRAVATED NATURE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 4/01/08

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: 721

Judge's Address P.O. BOX 9000

ORANGEBURG SC 29116

Judge's Telephone 803 533-5843

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

COURT DISPOSITION

Court Date: SEPTEMBER 25, 2009 @ 10:00 AM

Defendant Name: HENRY HAYGOOD III

Present: ☒ Not Present: ☐

Defendant Attorney: Jill Ullman

Case #: K238481

Charge: CRIMINAL DOMESTIC VIOLENCE

Affiant Name: L. JENKINS

Present: ☒ Not Present: ☐

Victim Name: TAWANNA HAYGOOD

Present: ☐ Not Present: ☒

Victim/Affiant Attorney: _____

Presiding Judge: S. A. Daily (L.S.)

Dispositions

☐ Pled Guilty ☒ Bench Trial ☐ Tried in absence

☐ Forfeited Bond ☐ Dismissed

☐ Nolo Contendere

☐ Not Guilty

☒ Guilty (30 Days Suspended / \$2130 Suspended /

CASA or New Directions)

☐ Guilty (Time Served)

☐ Guilty (Committed to jail for 30 days)

☐ Other _____

Notes: 9 Shot Gun was place in evidence

200800415

* Appeal by Attorney Ullman = defendant wants to do time - Judge Daily granted - ~~order~~ time to be served on weekends starting Friday @ 6pm - Sunday @ 6pm time to be served is 23 days (Credit time served 7 days)
 Ⓢ This is to begin 30 days from today (9-25-09)

2009 AUG 11 P 3:21
 FILED FOR RECORD
 WINNIEPAI CLARK
 CLERK OF COURT
 ORANGEBURG, SC

THE STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

THE COUNTY)

v.)

HENRY HAYGOOD,)

DEFENDANT.)

IN THE MAGISTRATE'S COURT

Charge(s): CDVHAN

Warrant/Indictment Nos.: K-237481

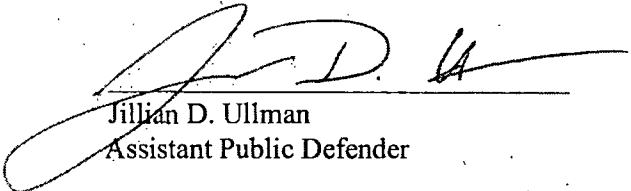
NOTICE OF APPEAL

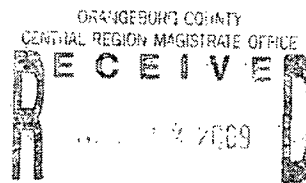
Defendant Henry Haygood, by and through his attorney, is hereby appealing the conviction of the above-referenced warrant entered on September 25, 2009. As required by S.C. Statute 22-3-790, please file this notice, together with the record, a statement of all the proceedings in the case, and the testimony taken at the trial in the office of the Clerk of Circuit Court within ten (10) days from today. Following this notice is a statement of the grounds for the appeal.

The defendant requests that the Court of Common Pleas grant oral argument, overturn the conviction, and remand the case for a new trial.

Respectfully Submitted:

October 2, 2009


 Jillian D. Ullman
 Assistant Public Defender



BY _____

STATEMENT OF GROUNDS FOR APPEAL

Procedural History:

This case was tried before the court on September 25, 2009. During the trial an objection was made by the defense to the state's introduction of verbal statements allegedly made by the alleged victim to the investigating officer. The objected to statements pertained to allegations of what the defendant allegedly did on the date in question. The court overruled defendant's objections and admitted the statement under the "excited utterance" exception to the hearsay rule. It should be noted that (1) the alleged victim was not present for the trial of the state; (2) the alleged victim resides in Orangeburg County and was available for trial; (3) the state did not subpoena the victim; (4) prior to the trial of the case, the alleged victim provided the defense with two written statements indicating (a) that she did not recall the events in question and (b) that she did not want the defendant to be prosecuted; and (5) that these statements were shown to the state prior to the case being remanded to the Magistrate Court.

The grounds for this appeal are as follows:

1. The introduction of the alleged verbal statements violated Defendant's Sixth Amendment right to confront the witnesses against him.

The Sixth Amendment Confrontation Clause provides that, "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him" In Crawford v. Washington, 541 U.S. 36 (2004), the United States Supreme Court has mandated that where testimonial statements are at issue, the only indicia of reliability sufficient to satisfy constitutional demands is confrontation. In the present case, the verbal statements to law enforcement constitute testimonial statements. In Crawford, the court stated that, testimony is typically "a solemn declaration or affirmation made for the purpose of establishing or proving some fact." "An accuser who makes a formal statement to government officers bears testimony..." 541 U.S. 36 (2004). In the present case, the alleged statements made by the victim constitute formal statements made to government officers. Because the statements were

testimonial, confrontation was mandatory under the 6th Amendment.

2. The alleged victim was available for trial; it was error to admit the verbal statements of the victim.

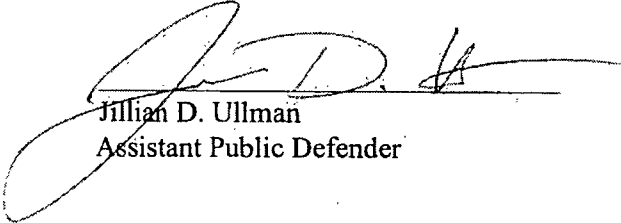
Out of court testimonial statements are admissible under the 6th Amendment only if: (1) the witness was unavailable at the trial of the case and (2) the defense had an opportunity prior to trial to cross examine the witness. Crawford v. Washington, 541 U.S. 36 (2004). In the present case the alleged victim was not "unavailable" No effort was made by the state to compel the testimony of this witness nor were efforts made to ensure this witness's attendance at the trial of this case. Furthermore, the defense had no opportunity to cross examine the victim prior to the trial of this case.

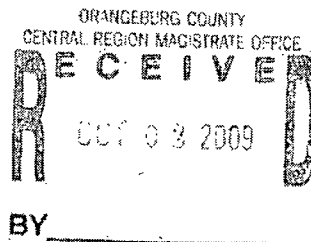
CONCLUSION

For the foregoing reasons, Defendant respectfully requests the Court to overturn the conviction and remand the case to Magistrate's Court for a new trial.

Respectfully Submitted:

October 2, 2009


Jillian D. Ullman
Assistant Public Defender



THE STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

IN THE MAGISTRATE'S COURT

THE COUNTY)

Charge(s): CDV-1st
 Warrant/Indictment Nos.: K-238481

v.)

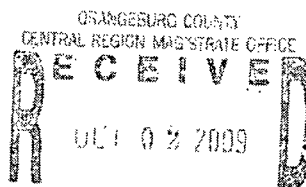
ACCEPTANCE OF SERVICE

HENRY HAYGOOD,)

DEFENDANT.)

Due and legal service of the within NOTICE OF APPEAL with a STATEMENT OF GROUNDS by the attorney for the above defendant, in the above entitled action is hereby accepted and a copy retained by Chief Magistrate Samuel Daily, in Orangeburg, South Carolina, this 2nd day of October 2009.


 Chief Magistrate Samuel Daily



BY _____

THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
THE STATE)
v.)
HENRY HAYGOOD,)
DEFENDANT.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Charge(s): CDV-1st
Warrant/Indictment Nos.: K-238481
WRIT OF MANDAMUS

Now comes the Defendant, by and through his attorney Jillian D. Ullman, respectfully requesting this Court mandate the Magistrate Court of Orangeburg County comply with S.C. Code 18-3-40.

On October 2, 2009, the Defendant filed a Notice of Appeal and Statement of Grounds from a bench trial held on September 25, 2009 in the Magistrate Court. S.C. Code 18-3-40 requires the Magistrate Court file the notice of appeal, the record, a statement of all proceedings in the case, and the testimony taken at the trial in the office of the clerk of circuit court. As of October 21, 2009, the Magistrate Court has not complied with this requirement. Defendant has a right to appeal the conviction and sentence of the Magistrate Court. S.C. Code 18-3-10. Unless the Magistrate complies with S.C. Code 18-3-40, Defendant's appeal cannot be heard.

For the foregoing reasons, Defendant respectfully requests this Court mandate the Magistrate Court of Orangeburg County comply with Statute 18-3-40.

Jillian D. Ullman
Jillian D. Ullman
Assistant Public Defender

Date: October 22, 09
Orangeburg, South Carolina

ATTEST: TRUE COPY
[Signature]
CLERK OF COURT

RECEIVED
OCT 23 2009
By: _____THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

THE STATE)

v.)

HENRY HAYGOOD,)

DEFENDANT.)

IN THE MAGISTRATE'S COURT

Charge(s): CDV-1st
Warrant/Indictment Nos.: K-238481**ORDER STAYING SENTENCE**

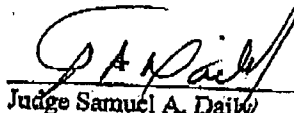
At the conclusion of a bench trial, Defendant was found guilty of CDV 1st on September 25, 2009. Defendant was sentenced to 30 days incarceration to be served on the weekends with credit for 7 days time served. Defendant immediately informed the Court of his intent to appeal the conviction. Defendant, by and through his attorney, requested the court allow at least 30 days for the Court of Common Pleas to hear the appeal. The Magistrate Court granted this request, requiring Defendant report to the Orangeburg County Detention Center on October 23, 2009.

On October 2, 2009, Defendant, by and through his attorney, filed a Notice of Appeal and Statement of Grounds in the Magistrate Court. Receipt of this Notice by the Magistrate Court stays all prior orders of this Court, until the appeal is heard by the Court of Common Pleas. Therefore, Defendant, Henry Haygood, does not have to report to the Orangeburg County Detention Center on October 23, 2009. This Court will notify the Orangeburg County Detention Center when the sentence is re-imposed, so that they may expect Mr. Haygood's appearance. Until the Orangeburg County Detention Center receives notice from this Court, Mr. Henry Haygood does not have to report to the Orangeburg County Detention.

IT IS SO ORDERED.

October 23, 2009.

OCT 23 2009 RCW


Judge Samuel A. Daily

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2010-CP-38-0314

STATE OF SOUTH CAROLINA

) APPEAL FROM
) MAGISTRATE'S COURT

versus

) TRANSCRIPT OF RECORD

HENRY HAYGOOD,

) DATE:

) SEPTEMBER 16, 2011

DEFENDANT

BEFORE:

HONORABLE EDGAR W. DICKSON PRESIDING JUDGE

APPEARANCES:

B. J. JEFFRIES, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

JILLIAN D. ULLMAN, ESQUIRE

PUBLIC DEFENDER

FOR THE DEFENDANT

SCANNED

DATE: 1/4/12

INITIALS: LV

RECEIVED
JAN - 3 2013

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

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ARGUMENT BY SOL. JEFFRIES	7

DATE:

SEPTEMBER 16, 2011

COURT REPORTER: I don't have a name or anything.

MS. ULLMAN: I'm sorry. This is Henry Haygood.

COURT REPORTER: Okay.

THE COURT: Ms. Harry Dot, this is the State of South Carolina versus Henry Haygood. It is 2010-CP-38-314, and it is an appeal from a criminal domestic violence case that was heard in front of Judge Davis. Is that correct?

MS. ULLMAN: Yes, sir.

THE COURT: Alright, Ms. Ullman. And this is a copy I can ...

SOLICITOR JEFFRIES: You can keep that one.

THE COURT: Okay, Ms. Ullman, I'll hear from you.

MS. ULLMAN: Thank you, Your Honor.

ARGUMENT BY MS. ULLMAN:

Mr. Haygood was charged with criminal domestic violence, and we had a bench trial in Magistrate's Court. At that bench trial, Your Honor, I was present, the defendant was present, Mr. Jeffries representing the State was present, and an officer was present. The victim of the case nor any other witnesses were present at that time.

I have appealed, Your Honor, because the State attempted to introduce oral statements given by the victim through the officer. I objected to that information under

1 the Crawford case. Basically, Crawford versus Washington,
2 Cite 541 U.S. 36 of the Two thousand four U. S. Supreme
3 Court case. Your Honor, in that case the U. S. Supreme
4 Court has decided that any testimony given to an officer,
5 given to a government agent, any information that could be
6 considered testimonial needs to be given by the person who
7 actually made that statement because the Sixth Amendment
8 requires that a defendant have the ability to cross-examine
9 any witnesses against him. When I made that objection, Your
10 Honor, the State stated that the information in the oral
11 statement given by the victim was an excited utterance, that
12 her presence was not necessary to get that in. At that
13 time, Your Honor, I again objected based on Crawford, I
14 stated that hearsay was not the issue I was even addressing,
15 it was more of a cross-examination, and she -- again the
16 officer testified that when he arrived on the scene, the
17 incident, whatever may or may not have happened had already
18 ended. The parties were separated, he was actually able to
19 speak with both parties on the scene. In speaking with the
20 alleged victim in this case he was obviously trying to
21 gather information to determine who he was going to arrest
22 and what kind of charges he was going to place. That is
23 under the Crawford case exactly what testimonial statements
24 are. A non-testimonial statement, Your Honor, would be if
25 the officer showed up and heard the victim yelling, help me,

5
1 help me, he's got a knife, something like that, that's her
2 cry for help, that's not a statement given for the purposes
3 of explaining what happened and potentially ending up in
4 Court giving that exact same statement. The oral statements
5 that the officer gave, also, Your Honor, if you would look
6 at her written statement, is pretty much word for word what
7 was given in her written statement. The main difference
8 would just be the tense, the verb tense used versus her
9 talking in first person. The officer gave these statements
10 in third person, claiming that she stated this, she stated
11 that. So again, Your Honor, I understand that the Court
12 actually ruled that this was an excited utterance and
13 allowed it in, but again, that was not my objection in the
14 first place, it was the Crawford issue because the officer
15 was obviously eliciting testimony on information or
16 statements from the alleged victim. The alleged victim was
17 not present for me to have any opportunity to cross-examine.

18 Crawford also states, Your Honor, where a victim is
19 unavailable, then the State has the burden of proving that
20 that victim, or that the witness is unavailable, and the
21 defendant's had previous opportunity to cross-examine, then
22 Crawford doesn't come into play. Unfortunately, Your Honor,
23 I had no opportunity to cross-examine this alleged victim,
24 and as far as I know she resided in Orangeburg, she was not
25 under subpoena. I would certainly say the State didn't

1 prove its burden or bear its burden of proving that she was
2 unavailable. So, that's the basis for the appeal, Your
3 Honor.

4 THE COURT: Okay. And Ms. Ullman, you don't happen to
5 have a copy of the Crawford case with you?

6 MS. ULLMAN: I do not have a copy of it but I can ...

7 SOLICITOR JEFFRIES: I've got a copy of it.

8 MS. ULLMAN: --- but I can get it over here in a
9 second.

10 THE COURT: You'd better be glad he's got all the stuff
11 you needed.

12 MS. ULLMAN: I know it. In my defense, I was under the
13 impression I ...

14 THE COURT: Why, why?

15 MS. ULLMAN: Yesterday I was busy,...

16 THE COURT: Oh, yeah, that's true, yesterday you were
17 busy, that's right, that's right.

18 MS. ULLMAN: Monday we did everybody's appearance.

19 THE COURT: I understand, I understand.

20 SOLICITOR JEFFRIES: I've just been sitting around this
21 week, I didn't have anything going on.

22 MS. ULLMAN: I was not implying that, all I meant was
23 he was not sitting in Court.

24 SOLICITOR JEFFRIES: May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 SOLICITOR JEFFRIES: Here's a copy of Crawford versus
2 Washington.

3 THE COURT: Have you already highlighted it?

4 SOLICITOR JEFFRIES: I have not, Your Honor, I have
5 mine that's highlighted.

6 THE COURT: Okay. That's okay, I can highlight it
7 myself. Thank you, sir.

8 ARGUMENT BY SOLICITOR JEFFRIES:

9 But I agree that this case turns on what Ms. Ullman
10 spoke of, and that's specifically whether or not this
11 statement's testimony. That's what Crawford speaks to.
12 What I disagree with is the proposition that Crawford vs.
13 Washington stands for the proposition that, that now that
14 excited utterance are no longer exceptions to the hearsay
15 rule. I mean, that's what this turns on. The judge decided
16 this case based on, or decided this issue of evidence based
17 on whether or not the testimony the officer was giving was
18 that of the testimony of variety, and I submit to you that
19 the judge used the correct application of law in deeming
20 that this was a hearsay exception, an excited utterance,
21 it's not testimony.

22 And citing Crawford versus Washington, that case dealt
23 with the State introducing a recorded statement that the
24 petitioner's wife had made during a police interrogation,
25 this was a recorded statement. And then they went into the

fact that the statement may or may not be admissible under the marital exception to statements being admitted into evidence because we're dealing with a husband and wife. We don't have to go that far in this case, this is not a testimonial statement, this was an excited utterance of the garden variety, excited utterance type under Rule Eight O Three, Two. The judge heard during the testimony that he arrived very shortly after the incident had happened, there were weapons involved, the victim's child was involved. I say all that because it just shows what an excited state she was in and because the statement was taken immediately after the start of the event while she was still under stress from the start of the event. It meets every element of an excited utterance.

This is not a testimonial statement, I think the judge used his discretion in hearing the argument of both parties and used the correct application of the law allowing the statement in. If the judge did err, and I don't believe he did, I would submit to the Court it was a harmless error. You will see in the record that the defendant also gave an admission at the scene that was corroborated by the victim's statement. So, what you had was the victim saying the defendant did A, B, and C, and then you had the defendant, when he was asked about it while the officer was investigating, he said, "You haven't seen nothing yet, I'm

1 the man of this house", giving the implication, you know,
2 that he did what she accused him of doing. So that was an
3 admission that the judge had to consider along with the
4 excited utterance, so if he erred on the law, and again I
5 don't believe he did, it was a harmless error, because you
6 also had the evidence from the defendant, his own admission.
7 He had evidence brought in, the weapons that were in the
8 home were introduced into evidence, at least the photos, I
9 think it was the actual gun that I had admitted into
10 evidence, but at the very least it was the photos and the
11 testimony from the officer that he seized these weapons that
12 were allegedly part of this criminal domestic violence
13 offense.

14 But I'd ask you to look at Crawford, and if you
15 distinguish it, and that that was a statement made, a
16 recorded statement made during interrogation, whereas, this
17 is an officer arriving at the scene, speaking to both
18 parties to find out what's going on, and an excited
19 utterance that the defendant did A, B and C, which
20 ultimately constituted criminal domestic violence. For
21 those reasons I'd ask you to not disturb the opinion of the
22 lower court in that there was no error of law, there was no
23 abuse of discretion, therefore, there's nothing for this
24 case to be reversed or remanded over. And that is the
25 State's position.

1 THE COURT: Alright, sir. The Return that I have says
2 that he stated that the alleged victim, Tawana Haygood,
3 stated to him that her husband began fighting her in the
4 bedroom and he stated to her that he was going to kill her.
5 And then stated that Mr. Haygood went to the bedroom closet
6 and received a brown in color shotgun, and that her Fourteen
7 year old son struggled with him to take the shotgun away
8 from him. Then she told him that Mr. Haygood reached into
9 his pants pocket where he kept a small hand gun, and she
10 grabbed his pants pocket causing some small bullets to fall
11 to the floor. Is this the whole statement that she said, I
12 mean, is that ...

13 SOLICITOR JEFFRIES: I couldn't speak to that being the
14 entire statement she gave.

15 THE COURT: Okay. And do we have -- we don't have --
16 was the hearing transcribed?

17 SOLICITOR JEFFRIES: It should have been, it should
18 have been.

19 MS. ULLMAN: It was electronically recorded. I
20 actually requested a copy of that recording and they told me
21 that they no longer had it, and I didn't get it, so they
22 created this record. Your Honor, what I would tell you, and
23 if you wanted to see or make part of the record, what you're
24 reading is what the officer read from his incident report.
25 He basically read his incident report that he wrote where he

1 says, I showed up, spoke to the victim. The victim stated,
2 blah, blah, blah.

3 SOLICITOR JEFFRIES: I mean, that's a factual, I mean,
4 that's an issue of fact I don't think you can just take for
5 granted. We're dealing with the issues of whether or not
6 the correct application of law was used based on what we
7 know.

8 THE COURT: And so, we don't have the taped recording?

9 MS. ULLMAN: No, sir.

10 SOLICITOR JEFFRIES: I was not aware of that either,
11 but ...

12 THE COURT: Okay. And this appeal was filed
13 immediately after the hearing?

14 MS. ULLMAN: Yes, sir.

15 THE COURT: Because that's, on my Return it looks like,
16 it has your appeal.

17 MS. ULLMAN: Yes, sir.

18 SOLICITOR JEFFRIES: It was my recollection you made
19 that appeal immediately after ...

20 MS. ULLMAN; Yeah, actually, when we were done at the
21 bench I told B. J. immediately we'd be appealing it, and I
22 believe I filed the notice on the same day. And then I had
23 problems getting the Return filed, I had to do a Writ of
24 Mandamus to get it done, and when the Return was filed
25 January Eleventh, Two thousand nine, -- that has to be Two

1 thousand ten, Your Honor, because this was all done at the
2 end of Two thousand nine -- when I saw the Return I then
3 tried to get a copy of the recording, which I requested that
4 February Third, Two thousand ten. Court was held on
5 September Twenty-fifth, Two thousand nine. And what
6 happened, they called my secretary and told her that the
7 recording was no longer available and we couldn't get a
8 copy.

9 THE COURT: Alright. Well, let me see what I can
10 determine from this. Okay? And I'll see. Okay?

11 SOLICITOR JEFFRIES: Thank you, Judge.

12 THE COURT: Ms. Ullman, what I'll do is, let me run a
13 copy of this and I'll give you ...

14 MS. ULLMAN: Is that the Notice?

15 THE COURT: That's your notice.

16 (END OF TRANSCRIPT)

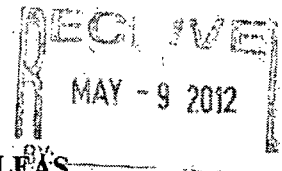
CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of Rowesville, South Carolina, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the Sixteenth day of September, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATE: January 2, 2013

Harry A. Walker
(MRS.) HARRY A. WALKER



STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

HENRY HAYGOOD,
Appellant

Case Number: 2010-CP-38-00314

vs.

ORDER DENYING APPEAL

The State of South Carolina
Respondent

This matter comes before me upon Motion of Jillian D. Ullman, Esq., representing the Appellant, to reverse and remand a conviction resulting from a bench trial held on September 25, 2009 in Orangeburg County Central Court. A hearing upon this Motion took place on September 16, 2011 with Bryan Jeffries representing the State. The Defendant was also present with his attorney, Ms. Ullman. Based on testimony offered during the hearing and the arguments made by both Counsel for the Defendant and for the State, I make the following findings:

1. This appeal is based on the lower court allowing into evidence a statement by the victim testified to by the responding officer. This statement was taken upon the officer's arrival to the scene. Appellant claims that this statement should be excluded based on the fact that it is hearsay. This Court disagrees and finds that the statement was admissible based on the hearsay exception found in Rule 803(2), which states that a statement can be admissible if it is an excited utterance. There are three elements that must be met to find a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event.

ATTEST: TRUE COPY

1/2

Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

or condition. The statement in question was taken directly after the incident of being threatened. The officer's testimony shows that the victim was still very upset when she gave the statement, and the excitement or stress was caused by the assault that had occurred.

2. The Crawford case provided by defense counsel is distinguishable from these facts because the statement in that case was a recorded taken in a custodial interrogation. Further, the Supreme Court overturned the statement that was deemed admissible by the lower court, not because it fell within the excited utterance hearsay exception, but because it bore a "particularized guarantee of trustworthiness." The Supreme Court determined that was in violation of the Confrontation Clause. This Court finds that the statement testified to by the officer is admissible under the excited utterance exception and that there was no error by the lower court. Because this statement was falls within a long established exception to hearsay, its admission does not violate the Confrontation Clause.

THEREFORE, IT IS ORDERED THAT the defendant's Appeal in the above-captioned matter is denied.

AND IT IS SO ORDERED.



Honorable Judge Edgar Warren Dickson
Presiding Circuit Court Judge
First Judicial Circuit

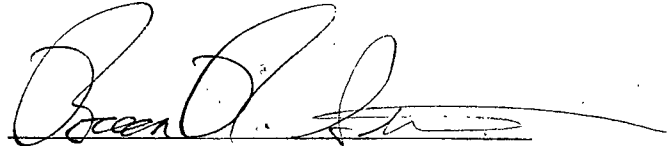
Orangeburg, South Carolina
This 4th day of ~~April~~ May, 2012

2/200

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that his Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with 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."

October 16th, 2013



Breen Richard Stevens
Assistant Public Defender

First Circuit Public Defender's Office
Orangeburg Office
P.O. Box 1112
Orangeburg, SC 29116
(803) 536-5682

ATTORNEY FOR APPELLANT

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OCT 16 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY HAYGOOD,

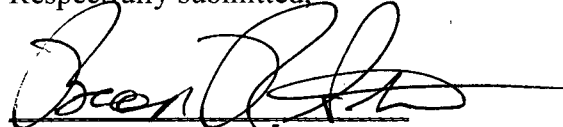
APPELLANT

APPELLATE CASE NO. 2012-211961

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal has been served upon Julie Kate Keeney, Esquire, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, and the South Carolina Court of Appeals, this 16th day of October, 2013.

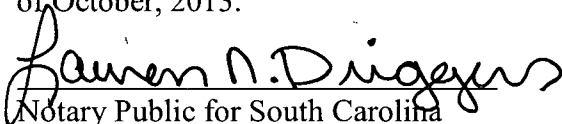
Respectfully submitted,



Breen R. Stevens
Public Defender
First Judicial District

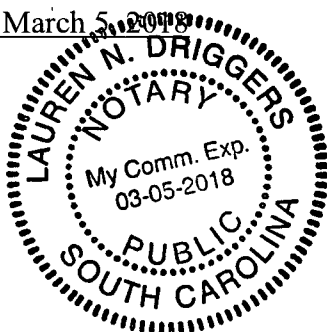
Attorney for Appellant

SWORN TO BEFORE ME this 16th day
of October, 2013.



Notary Public for South Carolina

My Commission Expires: March 5, 2018



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OCT 16 2013

SC Court of Appeals