

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

RECEIVED
JUN 06 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HORACE LEE GLOVER, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002016

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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

Whether the trial court should have declared a mistrial after the solicitor flagrantly commented on appellant's right to remain silent?

STATEMENT OF THE CASE

On April 15, 2013, an Aiken County grand jury indicted appellant Horace Lee Glover, Jr. for criminal domestic violence. On September 10-12, 2013, appellant was tried before the Honorable Doyet A. Early, III, and a jury. R. 1. Virginia Lauren Sheftall and Jeffrey Alan Slocum represented the State. R. 1. C. David Hayes and Michael D. Routzong represented appellant. R. 1. The jury convicted appellant. R. 143, ll. 16 – 20. Judge Early sentenced appellant to five years' imprisonment. R. 150, ll. 17 – 19. After timely filing and service of the notice of appeal, this appeal follows.

ARGUMENT

The trial court should have declared a mistrial after the solicitor flagrantly commented on appellant's right to remain silent.

The facts of this case were hotly contested. The alleged victim, Vanessa Brown ("Brown"), did not testify for the State or even show up for trial. R. 33, ll. 1 – 3. Instead of using Brown's testimony, two neighbors testified for the State. The first, Lawrence Spencer ("Spencer") testified that he was asleep when he heard arguing outside. R. 41, ll. 11 – 18. He claimed he saw a man beating a woman. R. 41, ll. 19 – 23. He called the police. R. 41, ll. 19 – 23. Even though Spencer knew appellant and had "sometimes" socialized with him, Spencer did not give the 911 operator appellant's name. R. 49, l. 25 – 51, l. 14.

Natalie Moore ("Moore") testified that she witnessed a fight between appellant and Brown. R. 73, l. 20 – 75, l. 1. On cross-examination, she admitted that Brown was her best friend and she does not get along with appellant. R. 84, ll. 7 – 14. Moore denied that her sour relationship with appellant was due to a fight he had with her boyfriend. R. 84, ll. 15 – 23.

Appellant testified that he and two friends were on their way home from a gas station when Tyrik Bright ("Bright") got telephone call from his girlfriend. R. 93, l. 12 – 94, l. 9. Bright's girlfriend told Bright that she had been in a fight with Brown. R. 94, ll. 10 – 13. When appellant got home, Brown "was standing out in front of the yard. She was going hysterical and cussing me out." R. 94, ll. 14 – 21. Appellant saw wounds on Brown's head. R. 94, l. 14 – 95, l. 6. Appellant walked into his apartment and when he came back out, Brown physically assaulted him. R. 95, ll. 9 – 20. Appellant walked off

with his friends and was sitting in a van smoking a cigarette when the police arrested him. R. 96, l. 2 – 99, l. 21. Appellant's friends, Bright and Ricky Harden, Jr., corroborated appellant's testimony. R. 104, l. 15 – 106, l. 23. R. 111, l. 1 – 115, l. 24.

During the solicitor's cross-examination of appellant, the following colloquy occurred:

Q. You told law enforcement that night what you just told us today; right?

A. Yeah.

Q. You told them that you didn't have anything to do with this CDV?

A. I didn't do nothing.

Q. You went to the store?

A. Yeah.

Q. You told them that all that night?

A. Yeah.

Q. You gave them a statement?

A. No.

MR. HAYES: Judge, I object. He has a right to remain silent.

THE COURT: He does.

R. 101, ll. 5 – 19. The trial court gave no curative instruction and failed to take any corrective action for this flagrant violation of appellant's Fifth Amendment right against self-incrimination. U.S. Const. amend. V.

In Doyle v. Ohio, 426 U.S. 610, 611 (1976), the United States Supreme Court held it is improper for the prosecution to comment or elicit testimony concerning a defendant's exercise of his right to remain silent post-arrest. See also Griffin v. California, 380 U.S. 609 (1965); State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). "The obvious purpose is to try to prevent jurors from improperly inferring the accused is guilty simply because he

exercised rights guaranteed to him by the state and federal constitutions.” Edmond v. State, 341 S.C. 340, 346, 534 S.E.2d 682, 685 (2000).

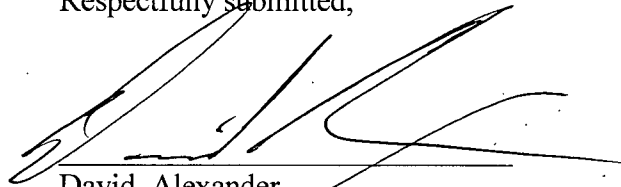
In State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986), our Supreme Court made clear “[a]n accused has the right to remain silent and the exercise of that right cannot be used against him. The [s]tate cannot, through evidence or the solicitor’s argument, comment on the accused’s exercise of his right to remain silent.” Id. at 394-395, 350 S.E.2d at 924. “Testimony that a defendant refused to comment on an accusation against him is an unconstitutional comment on his post-arrest silence.” Id. at 395, 350 S.E.2d at 924.

The solicitor’s comment on appellant’s post-arrest silence violated appellant’s Fifth Amendment rights. His entire line of questioning was meant to establish that appellant’s story was a recent fabrication. The solicitor pursued the same line of questioning with appellant’s witnesses, intimating that both had recently invented their testimony to help their friend. R. 107, ll. 14 – 23. R. 117, l. 16 – 120, l. 24. The solicitor asked Bright, “But you never gave a statement to law enforcement?” R. 120, ll. 1 – 2. This reinforced the intentional Doyle violation. At this point, to safeguard appellant’s Fifth Amendment rights, the trial judge should have declared a mistrial. The inference to the jury that appellant was guilty because he did not write a statement for police the night of the incident could not be cured, nor did the trial court even attempt to cure it. For these reasons, the case should be reversed.

CONCLUSION

For the foregoing reasons, this case should be reversed and remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of June, 2014.

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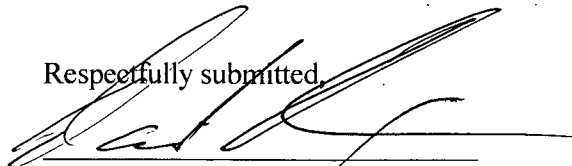
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Horace Lee Glover Jr. 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 Doyet A. Early, III, which was held on September 12, 2013, 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 Horace Lee Glover Jr..

Respectfully submitted,



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of June, 2014.

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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) Entire Trial transcript (September 10-12, 2013).

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

June 6th, 2014


David Alexander
Appellate Defender

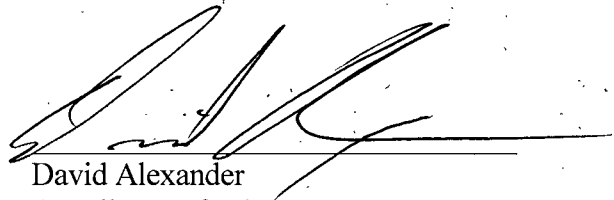
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

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."

June 6, 2014.

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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CERTIFICATE OF SERVICE

The undersigned attorney 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 Salley W. Elliott, 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 and Record on Appeal have been served on Horace Lee Glover, Jr., #343017 at Ridgeland Correctional Institution, P.O. Box 2039, Ridgeland, SC 29936 this 6th day of June, 2014.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2014.

Rhonda Denise Foxworth (S.)

Notary Public for South Carolina

My Commission Expires: October 17, 2021