

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Roger M. Young, Circuit Court Judge

RECEIVED

AUG 21 2014

S.C. Supreme Court

DERRICK GRANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000563

SUPPLEMENTAL APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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ALAN WILSON
Attorney General

ASHLEIGH R WILSON
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Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NOS: 2003-GS-08-0499
2003-GS-08-0500

STATE OF SOUTH CAROLINA,)
)
VS.)
)
DEREK M. GRANT,)
)
DEFENDANT.)
_____)

ORDER RELIEVING COUNSEL

HARVEY R. STROMAN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2003 MAY - 6 PM 2:12

FILED

This matter was before this Court April 30th, 2003 upon the Defendant's request to terminate the attorney-client relation with and discharge George B. Bishop, Jr., Esquire as his attorney of record in the above captioned indictments. Mr. Bishop was retained by the Defendant's father who was also present in Court.

After being made aware of the nature of the Defendant's request, much discussion was had with the Defendant regarding the seriousness of the charged offenses and the potential impact upon the Defendant should his request be granted. The Defendant was extremely adamant and I find it was clear and convincing from our discussion that he will not accept the help of nor would he cooperate with George B. Bishop, Jr., Esquire in his defense had I ordered Mr. Bishop to continue his representation.

Mr. Grant was fully warned about the inherent risks of delaying representation by other counsel, appointed or retained. Mr. Grant acknowledged he understood and accepted the risks of his request.

Wherefore, upon the Defendant's request, George B. Bishop, Jr., Esquire is relieved from further representation in this matter

RMD 2/1

and until Mr. Grant has secured other counsel by appointment or hire, he shall represent himself in a pro se manner. Therefore, the solicitor's office may communicate notices, provide additional discovery material upon receipt and or otherwise communicate directly with the Defendant as may be necessary to keep him apprised of the status of his cases.

IT IS SO ORDERED this 5th day of May, 2003.

R. Markley Dennis Jr.

R. MARKLEY DENNIS, JR.
PRESIDING JUDGE
NINTH JUDICIAL CIRCUIT

Moncks Corner, S.C.

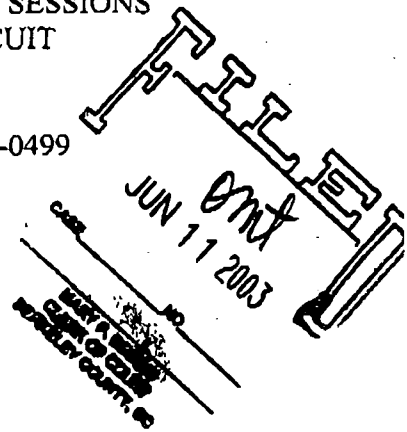
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 STATE OF SOUTH CAROLINA)
)
 -versus-)
)
 DERRICK GRANT,)
)
 _____)
 Defendant)

IN THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT

Indictment No: 2003-GS-08-0499

ORDER



This matter comes before me on motion of Blair C. Jennings, Deputy Solicitor for the Ninth Judicial Circuit for an order requiring the above captioned defendant to allow the Berkeley County Sheriff's Department to obtain samples of his blood and hair.

It appears the defendant was arrested on December 31, 2002 and charged with the offense of Murder. A true billed indictment was subsequently returned by the Berkeley County Grand Jury in March, 2003.

A hearing was held before this Court on Wednesday June 11, 2003, and the State offered testimony into the record to support its motion to have the defendant submit to blood and hair extraction. Captain Rick Ollic of the Berkeley County Sheriff's Office testified that the body of Rachel Sottile was found on December 26, 2002. An autopsy revealed that her throat had been cut and that she had suffered numerous lacerations to her head, back, abdomen and arms and hands. During the autopsy, scrapings from her fingernails, as well as a sexual assault kit were collected. In addition, a blood sample of Ms. Sottile was collected. All of the collected samples were transported to SLED for future testing.

The victim's car was found abandoned in downtown Charleston at the intersection of Hanover and Line Streets on December 27, 2002. Investigation revealed that the girlfriend of the defendant lives less than one block from this location. This car was processed by SLED and numerous areas of blood were located in the vehicle. These samples have been sent to SLED for future comparison. In addition, a bloody fingerprint was found on the rear view mirror. The fingerprint is that of the defendant's, and the blood is a mixture of the victim's and an unknown individual. This sample was also sent to SLED for later comparison to determine who the unknown contributor to the sample is. Captain Ollic testified that SLED needs samples of the defendant's blood and hair in order to do comparative analysis with the evidence collected by the Berkeley County Sheriff's Office.

The defendant was taken into custody on December 30, 2002 on an unrelated Family Court matter. At the time of his arrest, a severe cut to his left wrist was observed by Investigators. The wound appeared to have been inflicted recently.

cc: SD

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AB

On December 31, 2002 a statement was provided to Investigators by Travis Middleton who was housed in the Berkeley County Detention Center with the defendant. The defendant admitted to Mr. Middleton that he had sexual relations with the victim and killed her with a sharp object. He then said he abandoned her car in downtown Charleston. Captain Ollic testified that none of the information provided by Mr. Middleton had been relayed to the local media.

The defendant represented himself during this hearing. On April 30, 2002 the Defendant appeared in this Court and fired his attorney George Bishop. He further informed the Court that he did not want the Berkeley County Public Defender's office appointed to represent him. The Court informed the defendant that until he retained counsel, he would be allowed to represent himself.

Darling

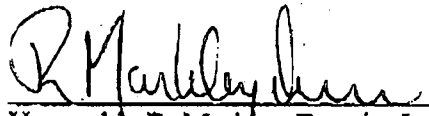
After hearing testimony from the above stated witness, I find the tests requested by Deputy Solicitor Jennings to be reasonable and, more specifically, that the procedures that will be used will not threaten Mr. Grant's health or safety. I find that these procedures pose only minor intrusions upon Mr. Grant's dignitary interests in personal privacy and bodily integrity and, therefore will not constitute a violation of his Fourth Amendment rights.

Specifically, pursuant to State v. Register, 419 S.E.2d 771 (1992), I find that there is probable cause that a crime was committed and that there is probable cause that this crime was committed by Mr. Grant. I also find that the requested evidence is relevant to the question of Mr. Grant's guilt or innocence and that the seriousness of this crime, the importance of this particular evidence to the investigation, and the unavailability of alternative less intrusive means outweigh Mr. Grant's constitutional rights to be free from bodily intrusion.

I further find the community's high interest in fairly and accurately determining the guilt or innocence of this defendant will best be served by performing the requested procedures. Winston v. Lee, 470 U.S.753 (1985).

THEREFORE, IT IS ORDERED under the authority of Schmerber v. California, 384 U.S. 757 (1966), that the defendant, Derrick Grant, submit to having samples of his blood and head hair extracted by qualified medical personnel at the Berkeley County Detention Center.

AND IT IS SO ORDERED!



Honorable R. Markley Dennis, Jr.
Ninth Judicial Circuit

This 11th day of June, 2003

Moncks Corner, South Carolina

RWD/2

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK GRANT,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by failing to instruct the jury on mere presence, since there was a question of whether Grant was guilty of the murder as an accomplice.

STATEMENT OF FACTS

On March 12, 2003, a Berkeley County grand jury indicted Derrick Grant for the murder of Rachel Sottile on December 26, 2002. On April 30, 2002, Grant fired his retained defense lawyer and Judge R. Markley Dennis, Jr., allowed Grant to proceed pro se by order dated May 5, 2003. On April 23 through 27, 2004, Judge Dennis presided at Grant's jury trial. The State presented forensic evidence connecting Grant to the murder, as well as incriminating statements he allegedly made to a couple of fellow detainees in the county jail also awaiting trial. Grant himself did not testify. The jury found Grant guilty as charged, and the judge sentenced him to life imprisonment.

ARGUMENT

The trial judge committed reversible error by failing to instruct the jury on mere presence, since there was a question of whether Grant was guilty of the murder as an accomplice.

According to one of the State's jailhouse informants, Grant claimed that the State was "trying to pin a murder rap on him." ROA p. 330, lines 6-13. Grant explained, the witness continued:

[T]hey're going to find my blood on her body and they're going to find my blood in her car, but I didn't kill her. ... They'll find my semen, my semen will be in her body.

ROA p. 331, line 22 – p. 332, line 11. How had this happened? The informant purportedly recounted Grant's story:

Two men came up to the car with something sharp in their hands. One of them pulled [Grant] out of the car and took him in the woods and, afterwards, when he came back out, that's when he found the body. And he checked the body, and that's how his blood get on the body. So he got scared, and he got in the car and he drove downtown, and that's how the blood get in the car.

ROA p. 332, line 12 – p. 333, line 2.

The judge's final instructions to the jury did not include a charge on the law of mere presence. When given the opportunity, Grant did not object to its omission. ROA p. 724, lines 1-3.

Under Grant's purported statement to the jailhouse informant quoted above, he himself recognized that the State's evidence made him look like a principal, even if he had only been merely present at the time Sottile was murdered. This evidence supported a jury instruction on mere presence:

[I]f there is a doubt over whether the defendant is guilty as an accomplice to a crime, the trial court may be required to instruct the jury that mere presence at the scene is insufficient to find the defendant guilty as an aider and abettor.

State v. Stokes, 339 S.C. 154, 528 S.E.2d 430 (Ct. App. 2000); compare *State v. Dennis*, 321 S.C. 413, 468 S.E.2d 674 (Ct. App. 1996).

By reason of the judge's failure to instruct the jury on mere presence, this Court should reverse Derrick Grant's conviction for murder and remand for a new trial.

Respectfully submitted,

Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of July, 2008.

STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK GRANT,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Derrick Grant states:

1. He is Chief 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 R. Markley Dennis, Jr., which was held on 2-26-04, 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 Derrick Grant.

Respectfully submitted,

Joseph L. Savitz, III
 Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of July, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DERRICK GRANT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 21st day of July, 2008. A copy of the brief and record on appeal have also been served on Derrick Grant, #300073 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472 this 21st day of July, 2008.

Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of July, 2008.

(L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK GRANT,

APPELLANT.

BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Appellant did not knowingly and intelligently waive his right to counsel. [Issue 1] As a transcript of the initial waiver hearing is apparently unavailable, the proper remedy would be to reverse Grant's convictions and remand for a new trial. [Issue 2]

STATEMENT OF THE CASE

On March 12, 2003, a Berkeley County grand jury indicted Derrick Grant for the murder of Rachel Sottile on December 26, 2002. On April 30, 2002, Grant fired his retained defense lawyer and Judge R. Markley Dennis, Jr., allowed Grant to proceed *pro se* by order dated May 5, 2003. Although Appellate Defense has been unable to obtain a transcript of that hearing, the judge's order states:

After being aware of the nature of the defendant's request, much discussion was had with the defendant regarding the seriousness of the charged offenses and the potential impact upon the defendant should his request be granted. ... Mr. Grant was fully warned about the inherent risk of delaying representation by other counsel, appointed or retained. Mr. Grant acknowledged that he understood and accepted the risks of his request.

Tr. p. 779. The judge thereupon relieved retained counsel and held that "until Mr. Grant has secured other counsel by appointment or hire, he shall represent himself in a *pro se* manner."

On June 11, 2003, at a hearing to obtain Grant's blood sample, the judge reiterated that, because of "the seriousness of this and the gravity of this...you really ought to give serious consideration to having someone other than yourself looking at this for you, because it is very difficult to be objective about your own situation." June 11, 2003 Tr. p. 20 lines 3-11. He observed that "you don't have any training in this area" and urged Grant to "seriously consider hiring an attorney or rethinking and allowing the court to appoint one for you." June 13, 2003 Tr. p. 18 line 17- p.20 line 1; June 11, 2003 Tr. p. 24 lines 5-6. Grant responded, "The Lord will send me a lawyer sooner or later." June 11, 2003 Tr. p. 24 line 9-10.

The Lord eventually sent the undersigned. On April 23 through 27, 2004, Judge Dennis presided at Grant's jury trial, where Grant represented himself. The State presented forensic evidence connecting Grant to the murder, as well as incriminating statements he allegedly made to a couple of fellow detainees in the county jail while awaiting trial. Grant himself did not testify. The jury found him guilty as charged and the Judge sentenced him to life imprisonment.

Pursuant to *Anders v. California*, 386 U. S 738 (1967), the undersigned filed a brief arguing:

The trial judge committed reversible error by failing to instruct the jury on mere presence, since there was a question of whether Grant was guilty of the murder as an accomplice.

By order dated March 30, 2009, the Court of Appeals denied counsel's petition to be relieved and directed the parties to brief the following two issues:

- (1) The Appellant knowingly and intelligently waived his right to counsel?
- (2) If the record fails to show whether there was a valid waiver of the right to counsel, what is the appropriate remedy?

This brief follows in accordance with the Court's order.

ARGUMENT

Appellant did not knowingly and intelligently waive his right to counsel. [Issue 1] As a transcript of the initial waiver hearing is apparently unavailable, the proper remedy would be to reverse Grant's convictions and remand for a new trial. [Issue 2]

Under *Faretta v. California*, 422 U.S. 806 (1975), a trial judge faced with a defendant who elects to represent himself must (1) advise the accused of his right to counsel and (2) adequately warn the accused of the dangers of self-representation. See, also, *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990), and *State v. Thompson*, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003). If the trial judge fails to address the disadvantages of appearing *pro se*, the Court of Appeals examines the record to determine whether the accused had sufficient background or was informed of his rights by some other source. *State v. Mc Lauren*, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). “[The] ultimate test is not the trial judge’s advice but rather the defendant’s understanding.” *State v. Thompson*, 355 S.C. 255, 584 S.E.2d 131,135 (Ct. App. 2003). *Ex Parte Jackson*, 381 S.C. 253, 672 S.E. 2d 585 (Ct. App. 2009), and *Mc Lauren* both list the factors to be considered in determining whether the accused had a sufficient background to understand the disadvantages of self-representation.

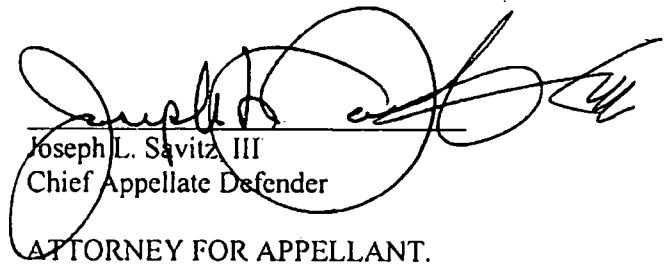
The purported *Faretta* waiver in Grant’s case was not valid. In the first place, it appears to have been spread over the course of at least two hearings, at the latter of which Grant was already representing himself. Moreover, the trial judge did not adequately address the dangers of self-representation.

The usual remedy for a deficient or nonexistent or waiver of counsel is a remand for an evidentiary hearing to determine whether the waiver was, in fact, knowingly and

intelligently made. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977). “However, [the Court of Appeals] can grant an appellant a new trial without an evidentiary hearing if it is clear a hearing on remand would serve no useful purpose.” *In re Christopher H.*, 359 S.C. 161, 596 S.E.2d 500, 505 (Ct. App. 2004), citing *State v. Cash*, 304 S.C. 223, 403 S.E.2d 632 (1991). In this case, as a transcript of the actual waiver hearing appears to be nonexistent, a remand for an evidentiary hearing would seem to be pointless.

For this reason the Court should reverse Grant’s conviction and remand for a new trial.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender
ATTORNEY FOR APPELLANT.

This 29th day of June, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

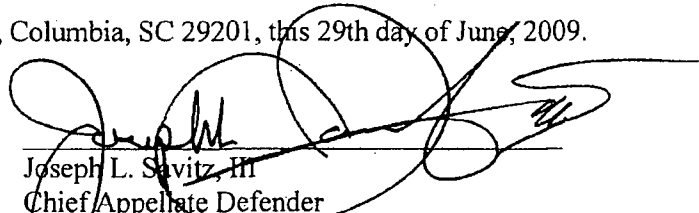
V.

DERRICK GRANT,

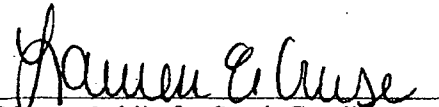
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above referenced case has been served upon Donald J. Zelénka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of June, 2009.


Joseph L. Savitz, III
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of June, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.