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Robert M. Dudek, Chief Appellate Defender
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October 9, 2014

Antonio Glover, #258670
Livesay Pre-Release Center
Post Office Box 580
Una, SC 29378

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NOV 03 2014

SC Court of Appeals

Re: Your case

Dear ~~Mr. Glover~~ *Antonio,*

Enclosed is a copy of the Opinion of the Court of Appeals affirming your conviction. This means we lost. I will not be filing a petition for rehearing or seeking certiorari at the South Carolina Supreme Court.

The Court held that your attorney conceded reasonable suspicion. This holding is in Paragraph 1. In Paragraph 4, the Court held the objection to the juror was not timely made. I am enclosing a PCR application for you. I believe you should raise the issue of ineffective assistance of counsel in a state PCR as relates to these grounds. The State will argue that you have waived the right to file a PCR application in exchange for your belated appeal. I think you should argue that your claims regarding issue preservation and the concession were not ripe until your appeal was decided.

Because the State may very well succeed in getting your PCR dismissed based on the waiver, I am also sending you a federal habeas petition. You should file this now and not wait to see what happens with your state PCR. I would not want your federal habeas statute of limitations to run out and find that the second PCR did not toll the statute. So file both the state and federal now.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Antonio Glover, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-202772

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2014-UP-350
Heard September 11, 2014 – Filed October 8, 2014

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Attorney General Kaelon E. May, and Assistant Attorney
General John Walter Whitmire, all of Columbia, for
Respondent.

PER CURIAM: This is a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), in which Antonio Glover argues the trial court erred by: (1) denying his motion to suppress and (2) declining his motion to remove two jurors. Glover contends his convictions should be reversed on these grounds. We affirm, pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Glover's motion to suppress evidence seized from his person based on a lack of reasonable suspicion:¹ *Ex parte McMillan*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (providing a party cannot concede an issue at trial and then complain on appeal).

2. As to whether the trial court erred in denying his motion to suppress based upon Glover's argument that his arrest was unlawful: *State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013) (stating that a search incident to a lawful arrest is one of the exceptions to the Fourth Amendment prohibition against warrantless searches and seizures); *State v. Robinson*, 335 S.C. 620, 634, 518 S.E.2d 269, 276 (Ct. App. 1999) (holding that when determining whether an arrest was lawful, a court must consider "whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [appellant] had committed . . . an offense" (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)

¹ Even if this issue was not procedurally barred, we note there was evidence to support the trial court's decision that reasonable suspicion existed to briefly detain Glover. See *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006) ("Our review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial court's finding."); see also *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) ("A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity. Reasonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity. In determining whether reasonable suspicion exists, the totality of the circumstances—the whole picture— must be considered." (internal citations and quotation marks omitted)).

(alteration by court)); S.C. Code Ann. § 16-3-600(E)(1) (Supp. 2013) (providing that "[a] person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so."); *State v. Goodwin*, 351 S.C. 105, 110-11, 567 S.E.2d 912, 914-15 (Ct. App. 2002) (holding that the underlying arrest "need not be prosecuted in order to successfully prosecute for resisting arrest," and similarly, "neither should the absence of a charge on the underlying arrest bar evidence seized subsequent to a proper resisting arrest charge).

3. As to whether the trial court erred in denying his motion to suppress based upon Glover's argument that the chain of custody was unreliable: *State v. Taylor*, 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct. App. 2004) ("The admission of evidence is addressed to the sound discretion of the trial judge."); *id.* at 22-23, 598 S.E.2d at 737 ("A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable. Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.") (citation omitted); *id.* at 24, 598 S.E.2d at 737 (If "there is evidence to establish the identity of those who have handled the evidence and the manner in which it was handled, a weakness in the chain merely raises a question of credibility, not admissibility."); *see also State v. Johnson*, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995) (finding a discrepancy between the dates on which a handler in the chain of custody received the evidence merely reflected upon the credibility of the evidence when no facts were presented to indicate the drugs were not within the control of identifiable people during the entire time).

4. As to whether the trial court erred in declining to remove two jurors after the jury had been impaneled: *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 111, 512 S.E.2d 510, 518 (Ct. App. 1998) ("[Section 14-7-1030 of the South Carolina Code (Supp. 2013)], provides that any objection to a juror is waived if not made before the jury is impaneled."); *id.* (holding that "[a] party objecting to a juror after the jury is impaneled must show that he could not have, in the exercise of due diligence, discovered the ground for objection before the impanelling of the jury.").

AFFIRMED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

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Debit

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SC Court of Appeals

South Carolina Court of Appeals
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