

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

RECEIVED

DEC 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

CHRISTOPHER T. GAMBLE,

APPELLANT

APPELLATE CASE NO. 2014-000465

ANDERS BRIEF OF APPELLANT

JOHN H. STROM
Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in denying Appellant's motion for a continuance where he was denied his right to effective assistance of counsel because counsel was unprepared and had only met with Appellant on the day before trial?

STATEMENT OF THE CASE

On July 23, 2013, the Greenville County grand jury indicted Appellant, Christopher T Campbell, on one count of criminal domestic violence of a high and aggravated nature (CDVABHAN). R. 83-84.

On March 5, 2014, Appellant proceeded to trial before the Hon. C. Victor Pyle and a jury. R. 1. Appellant was represented by Timothy Sullivan (hereinafter "counsel") and the State was represented by Judith Munson. The jury found Appellant guilty. R. 79, ll. 10-23. The trial court then sentenced Appellant to ten (10) years imprisonment. R. 81, ll. 12-14.

This appeal follows.

ARGUMENT

The trial judge erred in denying Appellant's motion for a continuance where counsel was unprepared and had only met with Appellant on the day before trial.

Relevant Facts

Pre-Trial Motions

Appellant's case was called for trial March 5, 2014. R. 3, ll. 2-8. When asked if the defense was ready to proceed, Appellant informed the court, "No, we're not, Your Honor. Me and my lawyer has not got this together yet." R. 3, ll. 9-10. Counsel countered, "Your Honor, we have been talking before this and this is a simple case." *Id.* at ll. 11-12. The trial judge denied Appellant's request for a continuance and called in the jury. *Id.* at ll. 13-20. Appellant continued to protest, asking "Your Honor, even though I don't comfortable about this trial?" *Id.* at ll. 21-22. At counsel's suggestion Appellant made a motion to relieve counsel and for a continuance. R. 4, ll. 4-9. Appellant alleged that, "me and my lawyer we haven't come together and it's been over eighteen months. Yesterday, he finally ---." *Id.* at 10-11. Trial judge stopped Appellant, denied the motions and informed Appellant that the trial is going forward, "with or without your lawyer. If you want to fire him and handle it yourself, if you can do that..." *Id.* at ll. 14-20.

Trial

At trial the State called Officer Patrick Lavery, formally of the Travelers Rest Police Department. Lavery testified that he was dispatched to appellant residence on May 29, 2012 at 10:40 PM. R. 23, ll. 16-25. Lavery made contact with the complainant, the mother of Appellant's girlfriend, Deborah Patrick. Patrick explained to Lavery that the girlfriend, Donna Rhodes, had been assaulted by Appellant. R. 24, ll. 4-9. When Lavery approached Rhodes he noticed both of her eyes were bruised and puffy. *Id.* at ll. 12-23. Rhodes explained that she had fallen but after speaking with Lavery and another officer. She alleged that Appellant had beaten her with his

fists and a baseball bat. R. 24, ll. 19 – R. 25, ll. 2. Rhodes's mother produced a baseball bat allegedly used by appellant. R. 27, ll. 1-24. After briefly speaking with Appellant, officers arrested Appellant. R. 29, ll. 18-23. Rhodes and her mother were taken to the police department to make statements. R.25, ll. 11-12.

Rhodes mother, Deborah Patrick, testified that she became concerned about her daughter's well-being when Rhodes failed to call her for several days. R. 33, ll. 3-16. Lastly, Rhodes testified that on May 29, 2012, Appellant assaulted her because he felt that Rhodes was flirting with a neighbor. R. 48, ll. 20 – R. 49, ll. 7. Rhodes testified that after hitting her Appellant refused to allow her to go to the hospital. R. 49, ll. 8 – R. 50, ll. 25. Rhodes finally convinced appellant to allow her to seek treatment on the twenty-ninth, at which time she told the treating physician that she had fallen off of a porch. *Id.* On cross-examination, Rhodes admitted to lying to police officers during a previous welfare check and to lying to the doctors that treated her wounds. R. 59, ll. 3-23.

The State and counsel entered into a stipulation concerning the kinds of injuries sustained by Rhodes and her initial explanation for those injuries. R. 62, ll. 5 – R. 63, ll. 4. Appellant did not testify at trial. Counsel moved for directed verdict at the end of states evidence, arguing that that Rhodes, "from her testimony, she admitted she lied about falling off the porch and her story was inconsistent." R. 63, ll. 10-12. After the jury rendered a verdict and was dismissed, counsel motioned to set aside the verdict based on the evidence presented. R. 80, ll. 1-2. The trial judge denied the motion. R. 80, ll. 3-4.

Discussion

“The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.” *State v. Yarborough*, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). However, even if there was no evidentiary support, “[i]n order for an error to warrant reversal, the error must result in prejudice to the appellant.” *State v. Preslar*, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct.App.2005); *see also State v. Wyatt*, 317 S.C. 370, 372–73, 453 S.E.2d 890, 891 (1995) (stating that error without prejudice does not warrant reversal).

The South Carolina Supreme Court in *State v. Squires*, 248 S.C. 239, 149 S.E.2d 601 (1966) held that a trial judge does not abuse his discretion in denying a continuance when “[t]here is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points in their behalf could have been raised had more time been granted for the purpose of preparing the case for trial.” *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989) (citing *Squires*, 248 S.C. at 244, 149 S.E.2d at 603). While the granting of a motion for continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion, if a defendant is not granted sufficient time to prepare his defense, it amounts to the denial of the right to counsel. *State v. Colden*, 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007).

The trial judge erred in refusing to grant Appellant a continuance. Appellant should have been granted a continuance and allowed the opportunity to retain new counsel. The record makes clear counsel was fundamentally unprepared and failed to subject the State’s case to adequate adversarial testing. For example, whether Appellant used a deadly weapon during the

alleged assault is an element and aggravating circumstance of criminal domestic of a high and aggravated nature. S.C. Code Ann. § 16-25-65.¹ The only testimony produced at trial linking the baseball bat to the alleged assault was the inconsistent testimony of Rhodes and Patrick. R. 37, ll. 3-24. Patrick was extremely hostile to Appellant and was responsible for multiple calls to law enforcement, including several predating the alleged assault which proved to be without merit. R. 17, ll. 7 – R. 19, ll. 20; *see Tanner*, 299 S.C. at 462, 385 S.E.2d at 834 (reversible error in not granting defendant a continuance to examine medical samples taken from crime scene and held in police custody, until immediately before trial; as analysis of samples was critical to defense). Further, Appellant's son, who allegedly retrieved the baseball bat from the bottom of his toy closet, was never called to testify.

Appellant complained that he had only met with counsel the day before trial; counsel did not deny this, but rather, claimed that the case was straightforward. R. 4, ll. 10-11. Moreover, as the case was only a little more than a year old and had not been called for trial, concerns of judicial economy and the quick resolution of cases should not have been a conclusive factor in denying the continuance. *Id.* at 7-20. Accordingly, the trial judge erred by refusing to grant Appellant a continuance as Appellant should have been allowed to obtain substitute counsel or to give counsel time to more fully prepare a defense. *Yarborough*, 363 S.C. at 266, 609 S.E.2d at 595.

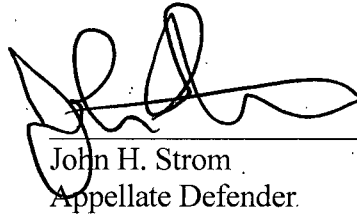
¹ S.C. Code Ann. § 16-25-65 reads in pertinent part:

- (A) A person...is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:
- (1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or,
 - (2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

CONCLUSION

For the foregoing reasons, Appellant Christopher Gamble respectfully requests that this Court reverse his convictions and remand this case to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of December, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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C. Victor Pyle, Jr., Circuit Court Judge

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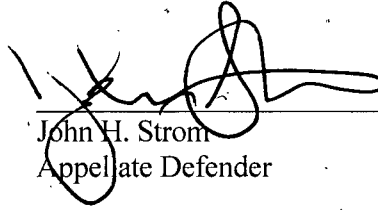
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher T. Gamble 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 C. Victor Pyle, Jr., which was held on March 5, 2014, 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 Christopher T. Gamble.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of December, 2014.

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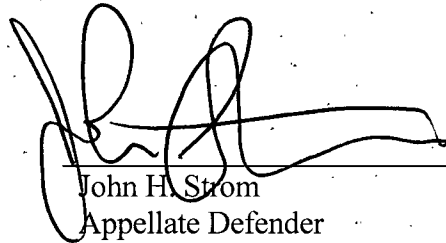
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s); and
- (2) Entire Trial Transcript (March 5, 2014).

I certify that this designation contains no matter which is irrelevant to this appeal.
December 17th, 2014



John H. Strom

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

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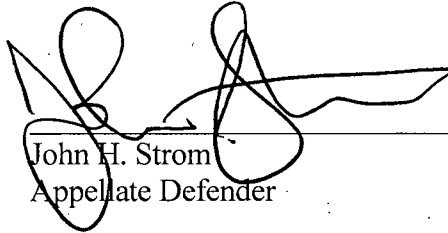
Attorney for Appellant

CERTIFICATE OF COUNSEL

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."

December 17, 2014



John H. Strom
Appellate Defender

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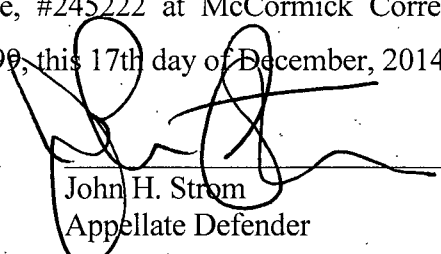
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APPELLATE CASE NO. 2014-000465

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 Christopher T. Gamble, #245222 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 17th day of December, 2014.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of December, 2014.

Rhonda Denise Joseph (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021