

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
IN THE COURT OF GENERAL SESSIONS
EDGAR W.DICKSON, CIRCUIT COURT JUDGE

RECEIVED

JAN 28 2015

CASE NO. 2002-GS-18-0831-0832

S.C. SUPREME COURT

The State of South Carolina,

Respondent,

vs.

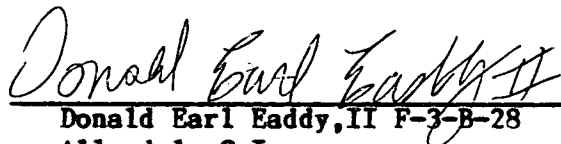
Donald Earl Eaddy, II,

Appellant

NOTICE OF APPEAL

Appellant, Donald Earl Eaddy, II appeals the Order of the Honorable Edgar W. Dickson, Circuit Court Judge dated May 13, 2014 dismissing Appellant Motion to After-Newly Discovered Evidence. Appellant received no written notice of entry of the Order dated January 2, 2015. The Honorable Edgar W. Dickson denied that Motion by Order dated December 19, 2014. Appellant received written notice of entry of this Order on January 21, 2015 via a letter from Dorchester County, Clerk of Court.

January 22, 2015



Donald Earl Eaddy, II F-3-B-28
Allendale C.I.
P.O. Box 1151
Fairfax, SC 29827

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Donald Earl Eaddy, II,

Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of same in the United States Mail, postage prepaid. On January 22, 2015, to its attorney of record, David M. Pascoe, Jr. the First Judicial Circuit Solicitor, 134 E. Richardson, Ave, Summerville, South Carolina 29483.

January 22, 2015



Donald Earl Eaddy, #294169 F-3-B-
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STATE OF SOUTH CAROLINA FILED IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
2015 JAN -2) PM 1:55

Indictment Nos. 2002-GS-18-0831, 0832

Cheryl Williams
CLERK OF COURT
DORCHESTER COUNTY

THE STATE,

VS.

DONALD EARL EADDY, II

DEFENDANT.

ORDER

2015 JAN -2 PM 1:49
CLERK OF COURT
DORCHESTER COUNTY
10-RECORDED

THIS MATTER CAME BEFORE THE COURT on May 13, 2014 on Motion of the Defendant seeking an Order to Vacate the Defendant's Conviction claiming that his constitutional protection against double jeopardy had been violated, that the True Billed Indictment was invalid, and that the sentencing judge's signature was forged on the sentencing sheet. The Defendant's motions are denied.

PROCEDURAL BACKGROUND/FACTS

On October 17, 2002, the Dorchester County Grand Jury indicted the Defendant, Donald Earle Eaddy, II, on Indictment 2002-GS-18-831 for Assault and Battery With Intent to Kill in violation of §16-3-620 of the South Carolina Code of Laws as amended, and on Indictment 2002-GS-18-832 for Child Abuse/Infliction of Great Bodily Harm Upon a Child in violation of §16-3-95(A) of the South Carolina Code of Laws, as amended.

On June 19, 2003, the Defendant was convicted on Indictment 2002-GS-18-0832 of Felony Child Abuse in violation of §16-3-95(A) of the South Carolina Code of Laws, as amended. The Defendant was also convicted on Indictment 2002-GS-18-0831 of common law Assault and Battery of a High and Aggravated Nature, as a lesser included offense of Assault and Battery with Intent to Kill.

On May 13, 2014, a hearing was held in front of The Honorable Judge Edgar Dickson. At that hearing, Judge Dickson denied the Defendant's motion with regard to the validity of the indictments and the sentencing judge's signature on the sentencing sheet. Judge Dickson withheld ruling on the issue of double jeopardy.

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On June 3, 2014, the Defendant filed a Motion for Reconsideration based on Judge Dickson's ruling at the May 13, 2014 hearing.

ISSUES

- I. Did the Defendant's convictions for Assault and Battery of a High and Aggravated Nature and Infliction of Great Bodily Harm Upon a Child (Felony Child Abuse) violate the double jeopardy clauses of the United States Constitution or the South Carolina Constitution?
- II. Are Indictments 2002-GS-18-831 and 2002-GS-18-832 invalid due to the Dorchester County Grand Jury allegedly having been unlawfully impaneled?
- III. Is the sentencing judge's signature on the sentencing sheet invalid?

LAW/ANALYSIS

I. Double Jeopardy

The Defendant was indicted and convicted under two separate offenses: one for Felony Child Abuse and one for common law Assault and Battery of a High and Aggravated Nature, as a lesser included offense of Assault and Battery with Intent to Kill.

The South Carolina statute for Infliction of Great Bodily Injury Upon a Child (Felony Child Abuse) provides in pertinent part as follows:

(A) It is unlawful to inflict great bodily injury upon a child...

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

S.C. Code Ann. §16-3-9(A), (C) (West, Westlaw current through end of 2013).

"The common law offense of assault and battery of a high and aggravated nature [(ABHAN)] is an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation." *State v. Frazier*, 302 S.C. 500, 397 S.E.2d 93 (1990). Examples of circumstances of aggravation include "the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, great disparity between the ages and physical conditions of the parties involved, and the difference in the sexes." *Id.* Other circumstances

include "indecent liberties or familiarities with a female, the purposeful infliction of shame and disgrace, [and] resistance to lawful authority." *State v. Hollman*, 245 S.C. 362, 140 S.E.2d 597 (1965); see also *State v. Williams*, 257 S.C. 257, 185 S.E.2d 529 (1971) ("It is not necessary that the victim suffer serious bodily harm"; the Supreme Court has "consistently held that taking indecent liberties or familiarities with a female, without her consent, constitutes" ABHAN).

As the Defendant argues in his motion, *Blockburger v. United States* insists upon a comparison of the elements of the two offenses (known as the same elements test) to determine if "each provision requires proof of an additional fact which the other does not." *Blockburger v. United States*, 284 U.S. at 304, 52 S.Ct. 180. "A mere overlap in proof, however, does not constitute a double jeopardy violation." *State v. Owens*, 309 S.C. 402, 405, 424 S.E.2d 473, 475 (1992).

These two offenses listed above not only clearly have different elements (the first requiring "great bodily injury upon a child" and the other requiring "aggravating circumstances"), but also require proof of different facts that the other does not. The indictment for Felony Child Abuse (Great Bodily Injury Upon a Child) was charged based on the fact that the Defendant beat the victim over several days, causing soft tissue damage and numerous other injuries. It may be true that serious bodily injury is one possible factor that could constitute aggravated circumstances, but it is not a necessary element of the offense. The Defendant was indicted for Assault and Battery with Intent to Kill. However, ~~he~~ ^{he} was convicted ~~for~~ ^{of} the lesser included offense of common law ABHAN based on the fact that aggravating circumstances were present when he choked his step-son. The Defendant (a grown man) physically assaulted his step-son (a nine year old minor child), by choking him. The fact that both the circumstances here point to a form of bodily injury is no more than a "mere overlap in proof". Finally, there is no case law in support of the assertion that ABHAN is a lesser included offense of Felony Child Abuse (Infliction of Great Bodily Injury Upon a Child). The Defendant's double jeopardy claim is without merit and is hereby denied.

II. Validity of Indictments

The Court finds that the Defendant's claim that the Solicitor improperly impaneled the Dorchester County Grand Jury, and the indictments are, therefore, invalid, is wholly without merit and is hereby denied.

III. Signature on Sentencing Sheet

The Court finds that Sentencing Sheet does include the signature of The Honorable Diane S. Goodstein. The Defendant's claim that Judge Goodstein's signature was forged is wholly without merit and is hereby denied.

IV. Motion for Reconsideration

The Court finds that the Defendant has not offered any novel or mitigating circumstances warranting reconsideration at this time. The Defendant's Motion for Reconsideration is hereby denied.

CONCLUSION

The Motion of the Defendant seeking an Order to Vacate the Defendant's Conviction claiming that his constitutional protection against double jeopardy had been violated, that the True Billed Indictment was invalid, and that the sentencing judge's signature was forged on the sentencing sheet are denied.

AND IT IS SO ORDERED.

Orangobug, SC
December 19, 2014



Edgar W. Dickson
Circuit Court Judge
First Judicial Circuit

Donald Earl Eaddy, II #294169 F-3-B-28
Allendale C.I.
P.O.Box 1151
Fairfax, SC 29827

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JAN 22 2015

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ACI

SC 22
FEB 02 2015

MAIL ROOM

CONFIDENTIAL LEGAL MAIL

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