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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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FEB 09 2015

Appeal from Spartanburg County

SC Court of Appeals

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES PATRICK SMITH,

APPELLANT

APPELLATE CASE NO. 2014-000921

ANDERS BRIEF OF APPELLANT

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by failing to direct a verdict of acquittal on the charge of CDVHAN, where the knife that Appellant allegedly used was not introduced into evidence, and there was no medical evidence presented that Page's injuries were "serious."

STATEMENT OF THE CASE

On July 19, 2013, a Spartanburg County grand jury indicted Appellant for criminal domestic violence of a high and aggravated nature (CDVHAN). R. 154. On April 16, 2014, Appellant's case proceeded to a jury trial before the Honorable Doyet A. Early, III., and a jury. R. 1. Roger Poole represented Appellant and Meghan Gilmer represented the State. R. 1.

After a two-day trial, the jury found Appellant guilty. Judge Early sentenced Appellant to nine years imprisonment. R. 152.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred by failing to direct a verdict of acquittal on the charge of CDVHAN, where the knife that Appellant allegedly used was not introduced into evidence, and there was no medical evidence presented that Page's injuries were "serious."

The Charge

To prove criminal domestic violence, high and aggravated, the State must present evidence that a household member committed (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. S.C. Code Ann. § 16-25-65 (1976 & Supp. 2011). While "serious bodily injury" is not defined in this section of the Code, it is defined in section 23-31-400(A)(2) (2007) as "a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 23-31-400(A)(2) (2007).

Facts at Trial

Tammy Page was the State's first witness and the alleged victim. R. 31. She and Appellant had been dating for three years and were living at 714 South Randolph Avenue in Landrum, South Carolina, in Spartanburg County. R. 31, lines 12 – 25. Appellant's mother and father also lived with Page and Appellant. R. 32, lines 10 – 15.

Page claimed that on February 9, 2013, Appellant called her to come over to the house to talk. R. 34, lines 3 – 6. When Page arrived, Appellant accused her of cheating with Jerry Petty and started beating her on her head. R. 34, lines 7 – 11. Appellant allegedly pulled out a knife and tried to stab her in her stomach. R. 34, lines 21 – 25. He

then gave Page the knife and told her to cut him, but Page threw the knife down on the ground. R. 35, lines 1 – 2. Appellant picked up the knife and started cutting her clothes. R. 35, lines 1 – 2.

Page further claimed that she walked away after Appellant cut her clothes, but he started following her. R. 40, lines 11 – 14. According to Page, Appellant was beating her as she walked down Randolph Street. R. 40, lines 12 – 19. Once they arrived at Jerry Perry’s front porch, Appellant continued to assault her. R. 43, lines 2 – 19. Perry was not home. R. 43, lines 2 – 19.

Sandra Hutchins and her husband were watching TV and “heard a great big commotion.” R. 83, lines 15 – 23. Hutchins walked out onto the porch and saw “somebody attacking somebody” on Jerry Perry’s front porch. R. 84, line 16. When the man saw Hutchins looking, he ran away. R. 85, lines 18 – 25. Hutchins realized that the woman was Page. R. 86, lines 1 – 9. Page told Hutchins that she needed to use the phone, but Hutchins did not have a phone. R. 89, lines 16 – 23. Page ran to a nearby house and called 9-1-1. R. 45, lines 1 – 8.

Deputy Mark Ervin, of the Spartanburg County Sheriff’s Office, responded to Randolph Avenue incident to assist the Landrum Police Department. R. 64, lines 2 – 7. Deputy Ervin claimed that he spoke to Page at the scene and that her clothes were hanging off of her and she was very upset. R. 65, lines 19 – 25. He also said that Page had a swollen lip, abrasions, and bumps on her head and chest. R. 67, lines 15 – 21. Officer Garcia, of the Spartanburg Sheriff’s Office, photographed Page’s bruises. R. 67, lines 9 – 10. Page gave a written statement. R. 68, lines 13 – 14.

Officer Scott Magaw, of the Landrum Police Department, was driving to the scene of the alleged assault, he saw Appellant run across the street and into the woods, where he stopped at the edge. R. 73, lines 6 – 22. When Officer Magaw drove up to the edge of the woods, Appellant hid down in a ditch. The officer shined his spotlight on the area and ordered Appellant to stay where he was. R. 74, lines 1 – 6. Appellant was holding a can of beer. R. 74, line 25 – R. 75, line 2.

Officer Raines, who also responded, conducted a pat-down search and discovered “a small medium sized folding knife” in Appellant’s pocket. R. 75, lines 12 – 18. Because the alleged assault on Page occurred outside of the city limits of Landrum, Officer Magaw turned Appellant over to the county deputies. R. 76, lines 10 – 25.

Appellant chose to put the State to its burden of proof and did not offer a defense.

Motion for a Directed Verdict

At the close of the State’s case, defense counsel moved for a directed verdict of acquittal. R. 98, lines 13 – 20. Counsel argued that “there is not any evidence in the record as to the actual introduction of a knife or a photograph of it.” R. 98, lines 13 – 20. Because no knife was entered into evidence, argued counsel, Appellant should have been acquitted of criminal domestic violence, high and aggravated. R. 98, 13 – 20.

The solicitor argued that the State had “established a prima facia case of criminal domestic violence of a high and aggravated nature.” R. 98, line 22 – R. 99, line 2. She further argued that, in addition to testimony from Page, there was testimony from two different officers that they found a knife on Appellant’s person. R. 99, lines 6 – 9. The solicitor explained that the elements “can be as to the injury as well as to a weapon being used.” R. 99, lines 3 – 4.

Judge Early denied defense counsel's motion

Discussion

The trial judge erred by failing to direct a verdict of acquittal as to the charge of CDVHAN. The knife that Appellant allegedly used was not introduced into evidence, and there was no medical evidence presented that Page's injuries were "serious."

A criminal defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362-63 (2006); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). When reviewing the trial judge's denial of a directed verdict, an appellate court must review the evidence presented at trial in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Buckmon, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). A trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the defendant is guilty. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

Here, Page testified that Appellant tried to stab her with a knife and cut up her clothes. Deputy Ervin testified that he observed bruises on Page's body. Officers Magaw and Raines testified that Appellant had a knife in his pocket when he was arrested. However, the knife was never presented at trial, nor was there a photograph of the knife admitted as an exhibit.

Furthermore, there was no medical testimony or evidence presented describing the severity of Page's injuries or whether the injuries were life threatening. Without the knife that officers recovered and evidence describing Page's injuries as "serious," the other evidence presented at trial merely raises a suspicion that Appellant committed criminal

domestic violence, high and aggravated. Therefore, the trial judge should have granted a directed verdict of acquittal on that charge.

CONCLUSION

For the reasons argued, Appellant James Patrick Smith respectfully requests this Court to direct a verdict of acquittal as to CDVHAN.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', written over a horizontal line.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2015.

STATE OF SOUTH CAROLINA
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Doyet A. Early, III, Circuit Court Judge

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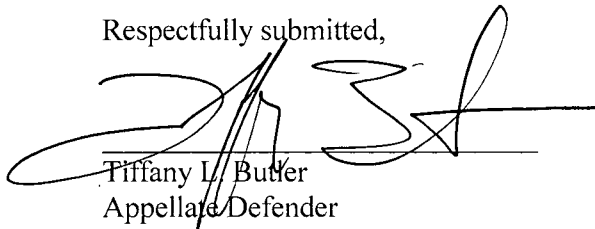
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Patrick Smith states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Doyet A. Early, III, which was held on April 17, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for James Patrick Smith.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2015.

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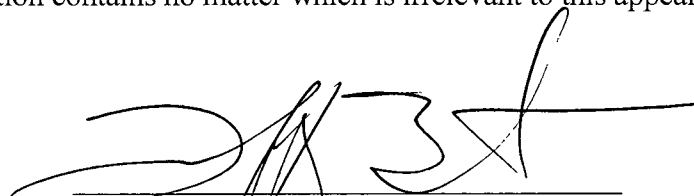
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript

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

February 9th, 2015



Tiffany L. Butler
Appellate Defender

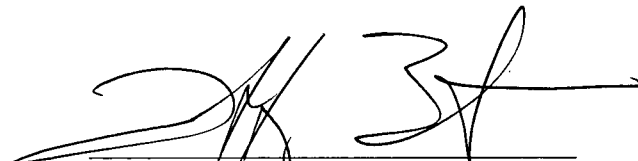
South Carolina Commission on Indigent Defense
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(803) 734-1343

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."

February 9, 2015

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', written over a horizontal line.

Tiffany L. Butler
Appellate Defender

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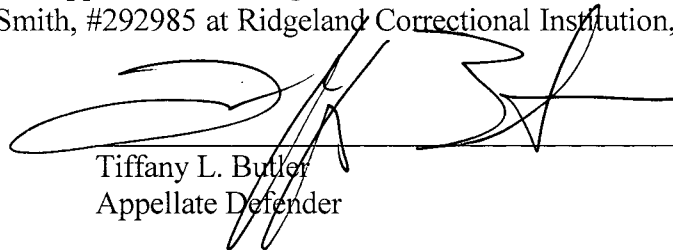
V.

JAMES PATRICK SMITH,

APPELLANT

CERTIFICATE OF SERVICE

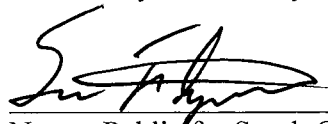
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on James Patrick Smith, #292985 at Ridgeland Correctional Institution, this 9th day of February, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.