

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SEP 19 2014

SC Court of Appeals

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY GLOVER,

APPELLANT

APPELLATE CASE NO. 2014-000162

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion for a directed verdict on the charges of CDVHAN, burglary first degree, and kidnapping when the state failed to present sufficient evidence beyond a reasonable doubt that appellant was guilty?

STATEMENT OF THE CASE

On February 7, 2011, the Charleston County Grand Jury indicted Michael Glover on the charges of criminal domestic violence of a high and aggravated nature (CDVHAN), burglary first degree, and kidnapping. On January 13-15, 2014, Glover proceeded to trial before the Honorable Roger M. Young and a jury. Glover was represented by Brian burke and Brian Johnson. The state was represented by Stephanie Linder and Jessica Baldwin. R. 1. The jury found Glover on all three charges as indicted. Judge Young sentenced Glover to twenty years on each of the burglary and kidnapping charges and ten on the CDVHAN with all sentences to run concurrently. R. 274, ll. 6 – 10. Glover's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF THE FACT

Alicia Glover and Michael Glover were married for eleven years but were separated at the time of this incident November 23, 2010 because Alicia had filed for divorce June 24, 2009. The divorce was not granted until March 4, 2011. They had six children. R. 64, ll. 3 – R. 66, ll. 2; R. 80, ll. 1 – 8. According to Alicia's testimony at trial, on November 23, 2010, she received two voice mail messages from Glover telling her that she was a slut because he knew someone was at her house with her, and she was keeping his kids from him. R. 66, ll. 3 – 9.

Alicia admitted that another was at her house with her that day who was just a friend because they worked together at Trident Hospital. His name was Wayne and he had come to fix her stove and wanted her to look at houses with him. They had lunch at Sonic's and had returned to her house. R. 66, ll. 10 – R. 67, ll. 24.

Wayne left shortly after they arrived. She noticed that her water was not working in one of the bathrooms; her journal was missing; the telephone cord in the bedroom was cut; and the window downstairs was not locked. As she started to leave the bedroom, she was hit in the head and face by Glover. He told her this was her fault and she was keeping the kids from him. He was not supposed to be in her house. R. 68, ll. 4 – R. 71, ll. 25.

Glover was very angry with her and just kept hitting her. He wanted to know the name of the man with her that day. He tied her to the bed in the boys' room, and told her to drop the charges. He allegedly said he would kill her if she went to the police. He finally left. R. 72, ll. 1 – R. 75, ll. 18.

Alicia went to a neighbor's house across the street who had someone call 911. R. 79, ll. 12 – 20; R. 101, ll. 10 – R. 103, ll. 25; R. 106, ll. 1 – 25.

During cross examination, Alicia admitted that when the divorce was granted on March 4, 2011, she was awarded the marital home, sole custody of the kids, and all of the personal property. Glover received nothing. R. 79, ll. 24 – R. 80, ll. 25.

Dr. Scott Hayes was the doctor in the emergency room at Summerville Medical Center when Alicia Glover was brought in on November 23, 2010. She had injuries to her head, face and chest where she had been struck with a closed fist. She suffered a laceration to her forehead which required three stitches. Her diagnosis included a minor head injury because she did not lose consciousness and was not knocked out. She had multiple abrasions and contusions to her face. R. 197, ll. 13 – R. 200, ll. 12.

Sarah Midgett was working as a deputy sheriff in Charleston County on November 23, 2010. She responded to the 911 call concerning Alicia Glover. She talked to Alicia and saw her bruised face. Deputy Midgett called EMS. Deputy Midgett photographed the residence and saw that the back door was unlocked. R. 124, ll. 1 – R. 129, ll. 25. Alicia played the two voicemail messages from Glover for the deputy. When Deputy Midgett met with Alicia two days later, the deputy she downloaded the two messages onto a disk and turned them into evidence. She did not know what happened to them. R. 133, ll. 4 – R. 134, ll. 25.

On cross examination, Deputy Midgett explained that she left the Sheriff's Office shortly after this incident, and did not know what happened to the disk. She admitted that she did not process the scene for fingerprints; did not notice any foot impressions; and did not process for DNA. She also did not try to use any method to find out where Glover's phone was located when he made the calls. R. 135, ll. 1 – R. 138, ll. 25. Deputy Midgett did not see any blood drops or splatter in the home. R. 140, ll. 12 – R. 141, ll. 21.

Detective Keith Herriott of the Charleston County Sheriff's Department, was with forensic crime scene services. R. 145, ll. 21 – R. 146, ll. 25. The door appeared to have been pried open but not the window. The screen had been removed from the window but he did not process the screen for prints. He did not process the crime scene for fingerprints, DNA, nor shoe impressions. R. 155, ll. 1 – R. 162, ll. 7.

Defense counsel moved for a directed verdict at the close of the state's case which the trial judge denied. R. 215, ll. 3 – R. 216, ll. 4. In his closing argument, defense counsel argued to the jury that Alicia Glover made up this story because she wanted to get all of the assets from the divorce which she did. Michael Glover had to appear at the divorce hearing in his prison uniform because he was incarcerated. Alicia had filed for divorce on June 24, 2009. Alicia had charged Glover with stalking earlier and he was incarcerated briefly but he was released. Then she had him arrested for the burglary, CDVHAN, and kidnapping. She was divorced four months later while he was incarcerated. R. 236, ll. 14 – R. 237, ll. 9; R. 248, ll. 22 – R. 250, ll. 5.

ARGUMENT

The trial court erred in denying appellant's motion for a directed verdict on the charges of CDVHAN, burglary first degree, and kidnapping when the state failed to present sufficient evidence beyond a reasonable doubt that appellant was guilty.

On appeal of a denial of a directed verdict of acquittal, the Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004); State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

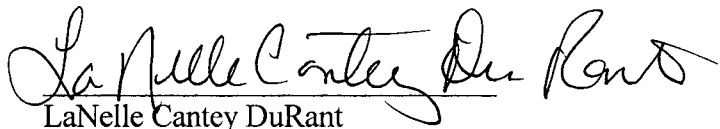
A directed verdict motion should not be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006).

The evidence in this case only raised a suspicion that Glover was guilty. The state had no real forensic evidence such as DNA, fingerprints, blood splatter, nor eyewitnesses. The only evidence was from Alicia Glover.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for the entry of a directed verdict.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant".

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of September, 2014.

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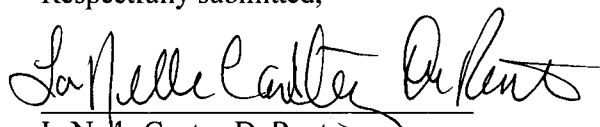
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Anthony Glover 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 Roger M. Young, which was held on January 15, 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 Michael Anthony Glover.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of September, 2014.

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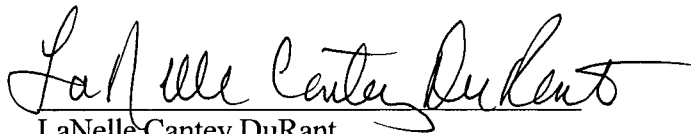
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript January 13-15, 2014

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

September 19th, 2014



LaNelle Cantey DuRant
Appellate Defender

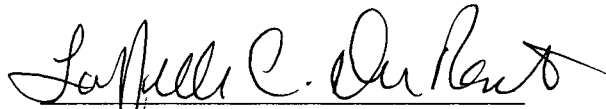
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(803) 734-1343

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."

September 19th, 2014



LaNelle C. DuRant

Appellate Defender

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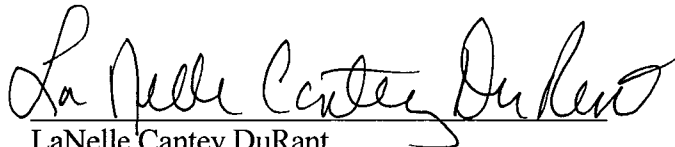
V.

MICHAEL ANTHONY GLOVER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and a true copy of the Record on Appeal in the above referenced case have been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Mr. Michael Anthony Glove, #292936, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 19th day of September, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of September, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.