

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 03 2015

Appeal from Spartanburg County **SC Court of Appeals**
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMMY WAYNE LASTER,

APPELLANT

APPELLATE CASE NO. 2014-001937

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in instructing the jury that a specific intent to kill is not an element of attempted murder?

STATEMENT OF THE CASE

In 2013, the Spartanburg County Grand Jury indicted Laster for attempted murder, indictment #13-GS-42-384. On August 25, 2014, the indictment was amended to include an additional count, possession of a weapon during the commission of a violent crime. The amended indictment was directly presented to the Spartanburg County Grand Jury and the grand jury indicted Laster for the additional count. On September 3, 2014, Laster proceeded to jury trial before the Honorable G. Edward Welmaker. Andrea Price represented Laster at trial. Meghan Gilmer prosecuted the case. The jury found Laster guilty of the lesser included offense of assault and battery of a high and aggravated nature [ABHAN] and possession of a weapon during the commission of a violent crime. Judge Welmaker sentenced Laster to 175 months provided upon the service of 60 months the balance is suspended with probation for five years for ABHAN and a concurrent 60 month sentence for the weapon charge. A timely notice of intent to appeal was served on September 12, 2014. This appeal follows.

ARGUMENT

The trial judge erred in instructing the jury that a specific intent to kill is not an element of attempted murder.

Appellant was charged with cutting his common law wife, Crystal Moore, with a knife. Both Appellant and Moore testified that the knife cut resulted from the Appellant accidentally tripping and falling on his wife while he had a knife in his hand. (R. p. 114, line 6 – p. 115, lines 1-8; p. 134, line 12 – p. 135, lines 1-19). Moore’s sister, Kisty Jolley, was in the hotel room when Moore was cut but admitted that she did not actually see the Appellant cut Moore. (R. p. 62, lines 16-19).

During the jury instruction the judge charged the jury with the law on the defense of accident. (R. p. 186, lines 7-17). During the accident instruction the judge provided the following example: “An example of that would be if a person lawfully armed in self defense and an accident - a gun accidentally discharges. Then, of course, the defense of accident would apply.” There was no objection to the example based on the fact that the jury may have inferred that an accident defense only applies in the context of self defense. This issue may need to be raised in post conviction relief.

The judge also instructed the jury, “A - a specific intent to kill is not an element of attempted murder. But there must be a general intent to commit serious bodily injury.” (R. p. 184, lines 8-9). The trial judge erred. In State v. King, No. 2012-213405, 2015 WL 1813949, at *5 (S.C. Ct. App. Apr. 22, 2015) (petition for rehearing pending) the South Carolina Court of Appeals wrote, “We find the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder, and therefore the trial court erred by charging the jury that attempted murder is a general intent crime.”

In King the Court found that the erroneous jury instruction and the admission of the officer's hearsay testimony prejudiced King and the Court ordered a new trial as to the attempted murder charge. In the present case the jury returned with a guilty verdict for the lesser included offense of ABHAN. The prejudice in the present case results from the erroneous jury charge and the confusing accident charge. This Court should find prejudice and order a new trial.

CONCLUSION

Based on the above argument Appellant's convictions for ABHAN and possession of a weapon during the commission of a violent crime should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of June, 2015.

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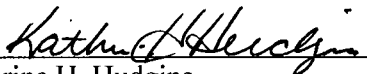
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timmy Wayne Laster 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 G. Edward Welmaker, which was held on September 3-4, 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 Timmy Wayne Laster.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of June, 2015.

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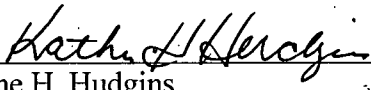
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment and sentencing sheets;
- (2) Trial transcript.

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

June 3, 2015


Kathrine H. Hudgins
Appellate Defender

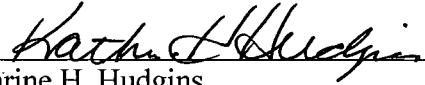
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

June 3, 2015



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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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 Timmy Wayne Laster, #361268 at Wateree River Correctional Institution, this 3rd day of June, 2015.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of June, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021