



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

June 1, 2010

Mr. Randolph F. Ashford #256638
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your appeal

Dear Mr. Ashford:

Enclosed is a copy of the Initial Anders Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/mwl

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDOLPH F. ASHFORD,

APPELLANT

INITIAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's directed verdict motions on the two charges of assault with intent to kill because the one single gunshot that was allegedly fired by appellant in the path of two police officers, who were camped outside the residence where appellant was housed, did not support the two assault charges.

STATEMENT OF THE CASE

Appellant Randolph Ashford was convicted per jury trial of assault and battery of a high and aggravated nature, first degree burglary, two counts of kidnapping, three counts of carjacking, and two counts of assault with intent to kill during the March/April 2009 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper, Judge. Appellant was sentenced to imprisonment for a period of forty years.

Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in denying appellant's directed verdict motions on the two charges of assault with intent to kill because the one single gunshot that was allegedly fired by appellant in the path of two police officers, who were camped outside the residence where appellant was housed, did not support the two assault charges.

The state presented evidence of a series of events that began in Richland County on February 24, 2007, when appellant allegedly committed a carjacking on Oakland Avenue, and then another alleged car jacking on North Main Street, and yet another alleged carjacking (cab) on Cushman Drive, where a kidnapping allegedly occurred at that time also. Ultimately, appellant ended up at the residence of a woman whom the state alleged was kidnapped and raped by appellant while they were inside the residence. Additionally, the state alleged that appellant fired a gunshot in the path of two police officers who were camped outside the residence while other officers prepared to enter the residence.

Oakland Avenue

Barry Taylor testified that on the morning of February 24, 2007, he was driving on Oakland Avenue in Columbia when a male holding a .32/.38 weapon stopped him and ordered him out of his (Taylor's) Oldsmobile (88 Delta). Taylor stated that he exited out of his car and watched the perpetrator drive off in his car. Taylor learned later that his vehicle was located at Wash World on North Main Street. Tr. p. 159, l. 19 – p. 169, l. 6.

North Main Street

Olin Kelly testified that he and his wife were inside their car (Lincoln Town Car) in the parking lot of Wash World on North Main Street in Columbia on the morning of February 24, 2007, when a male pulled up in a vehicle and stopped at their vehicle. The

male pointed a gun and said he was going take their Lincoln Town Car After Kelly got out of their car (Kelly was already out of the vehicle), the male perpetrator got in their car and drove off. Later, when shown a photographic lay-out containing possible suspects in the case, Kelly selected appellant's picture and identified him as the perpetrator. Tr. 173, l. 18 – p. 195, l. 13.

Cushman Drive

Gregory Fleming and Kimberly Galliard testified that they were on Cushman Drive in Columbia on the morning of February 24, 2007, when they saw the driver of a Lincoln Town Car crash into a pole. Then, they saw the driver get out and approach them, but they drove off. However, Fleming and Galliard went back to the area to observe the driver's subsequent actions. They saw the perpetrator approach several females who were standing outside Gill Street Church,¹ and then they saw the male enter the church and come out holding a woman by the name of Evelyn Worthy,² whom he later released after he hailed a Blue Ribbon Cab³ that was in the area outside the church. Both Fleming and Galliard later identified the male driver and perpetrator as appellant after having viewed a photographic lay-out shown to them by police. Tr. 206, l. 14 – p. 219, l. 20; Tr. 228, l. 14 – p. 236, l. 24.

¹ Kelli McQueen testified that she and her friends were listening to music inside her mother's white Tahoe parked in front of the Gill Street Church on February 24, 2007, when a male whom she identified as appellant approached with a gun. Kelli McQueen and the other girls then ran inside the church. Tr. p. 241, line 19 – p. 261, line 20..

² Evelyn Worthy testified that she was inside the Gill Street church when she heard Kelli McQueen scream call 911. Worthy stated that she was dialing 911 when a male approached, took the phone, and shepherded her outside the church, wherein after he ultimately released her and got into a cab. Tr. p. 276, line 22 – p. 294, line 18.

Deborah Ann Simmons

Ms. Simmons testified that she was inside her residence on February 24, 2007, when she saw a blue cab pull up in her yard. Simmons stated that minutes later, appellant, whom she knew as her relative Roberta's boyfriend, came bursting through her front door holding a gun and asking about Roberta's whereabouts. Simmons added that during the time appellant was inside her home with her, he (appellant) fired a gunshot through the window⁴ and also forced her to have sex with him on the kitchen floor. Simon testified that she was freed when police officers entered and took her an appellant out of the residence.⁵ Tr. p. 341, l. 22 – p. 364, l. 2.

At the close of the state's case in chief, the defense moved for directed verdicts of acquittals on the two charges of assault with intent to kill two police officers because there was insufficient evidence establishing proof on those two assault charges. Tr. p. 756, line 16 – p. 762, line 18.

In State v. Walsh, 300 S.C. 427, 388 S.E.2d 777 (1990), the court held that where the defendant fired a single shot at the victim there was no error with respect to the charges of assault with intent to kill and pointing a firearm because the two offenses were separated and distinct as both offenses contained different elements. In Walsh, the Court held that "a defendant may be severally indicted and punished for separate offenses without being

³ Cab driver Malachi Jones testified that he was on Cushman Drive when a man holding a gun approached asked him and his passenger to step out, and then off in the cab. Tr. 294, line 2 – p. 299, line 12.

⁴ Deputy Unger and Deputy White testified they were establishing boundary parameters around Simmons' residence and were between the van and trailer when a shot was fired and they both dropped to the ground. Tr. p. 431, line 9 – p. 449, line 3; Tr. p. 4; Trp. 459, line 17 – p. 566, line 24.

placed in double jeopardy where a **single act** consists of two distinct offenses. This begs the question in the instant case of whether a **single act** of the alleged firing of one single gunshot would constitute two counts of the same offense (that offense being assault with intent to kill). Police officers Unger and White testified they both dropped to the ground when a single gunshot from Simmons' trailer came whizzing by them in their direction where they were camped outside Simmons' residence. Clearly, one gunshot could not possibly have constituted two counts of assault with intent to kill both Officer Unger and Officer White. An election of one officer for one assault charge to correspond with the one gunshot should have been made in the case.

One is guilty of assault with intent to kill if a person attempts to cause bodily injury to **another** (that another being a single being). State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000). Assault is defined as placing **another** (that being a single being) in apprehension of harm. State v. Sutton, *supra*. All definitions of assault and assault with intent to kill speak in terms of a single act against a single person. In State v. Mims, 286 S.C. 553, 335 S.E.2d 237 (1985), the court defined assault as "an unlawful attempt or offer to commit a violent injury upon **the person of another**, (that another being a single being) coupled with a present ability to complete the attempt. Again, the definition refers to one single person acting singularly against **another** single victim. Also, in Sutton, assault is defined as a single act of placing another (single being) in apprehension of harm. Again, the assault theory is singular, i.e., one person putting another person in apprehension of harm. Apparently, assault cases are singularly oriented.

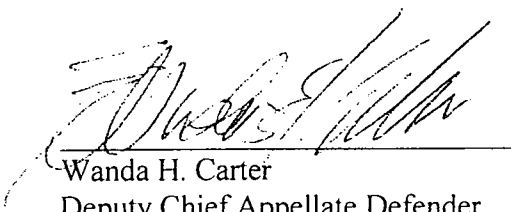
⁵ Police Officers Marcus Brown and James Abraham testified that they entered Simmons' residence after throwing flash bangs (tear gas grenade) into the house and then pulled Simmons and appellant out. Tr. p. 516, line 1 - p. 537, line 17; Tr. p. 550.

In the case at bar, one singular gunshot allegedly fired by appellant could only constitute one act of assault with intent to kill either Officer Unger or Officer White, but not two counts of assault with intent to kill both Officer Unger and Officer White. Had two gunshots been fired at two persons (i.e. both officers), then there would have been arguably grounds to raise two allegations of two counts of assault with intent to kill. The state must prove beyond a reasonable doubt all elements of the offense charged in order to obtain a conviction. Jackson v. Virginia, 443 U.S. 307 (1979). The trial judge violated the due process clause of the Fourteenth Amendment and article 1 §3 of the South Carolina Constitution in denying appellant's directed verdict motions on the two assault charges in the case.

CONCLUSION

Based on the following argument, appellant's two assault convictions and sentences should be reversed.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

June 1, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDOLPH F. ASHFORD,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randolph F. Ashford states:

1. She is Deputy Chief 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. Thomas Cooper, which was held on April 3, 2009, 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 Randolph F. Ashford.

Respectfully submitted,

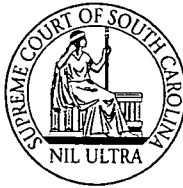


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

June 1, 2010



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Tiffany N. Richardson
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

August 6, 2010

PERSONAL AND CONFIDENTIAL

Randolph Ashford #256638
Lieber Correctional Institution
Stono-B-60
P.O. Box 205
Ridgeville, SC 29472

RE: Lawyer: Wanda H. Carter, Esquire
Case Number: 10-DE-L-0906

Dear Mr. Ashford:

We have received and reviewed your complaint against Wanda H. Carter, Esquire. The authority of this office and the jurisdiction of the Commission on Lawyer Conduct concerning complaints against lawyers are limited to issues of whether a lawyer has committed misconduct or is incapacitated within the guidelines of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

These rules do not apply to matters related to whether or not the outcome of a case handled by a lawyer was fair. We do not have authority to intervene in any matter presently pending before a court or to change the outcome of the decision of a court. These are legal matters that must be addressed by you to the court or raised by you on appeal using appropriate appellate procedures.

In addition, this office does not seek to get a lawyer to do something a person wants done. We cannot give advice about your case or the legal system in general. This is not a place for an individual to seek relief, but a place where institutional values are promoted for the good of everyone who has dealings with our legal system.

STHRC

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Richland)

2012 CP 400 1053

Randolph Ashford # 256638)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2012 FEB -6 PM 12:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution 990

Wisacky Highway, Columbia Bishopville, South Carolina, 29010

2. Name and location of Court which imposed sentence Richland County Court of

General Sessions 1701 Main Street Columbia, SC. 29201

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2007-GS-40-1939-41; 2000-2003; 2048

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:


(a) April 3, 2009. (See Attachment-0-).

(b) _____

(c) _____

4. This Court intended that Mr. Ashford's sentence should be a total of forty (40) years.¹

AND IT IS SO ORDERED!

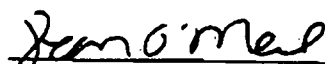
 4-14-09

G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

Columbia, South Carolina

This 9 day of April, 2009

ON MOTION OF:



Deon O'Neil
Assistant Public Defender
Attorney for the Defendant

(ATTACHMENT - 0 -)

¹ If correction of the Sentencing Sheet is necessary for clarification of this sentence, please advise.

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____ ✓
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals.
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. unpublished opinion NO. 2012-UP-035
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Submitted January 3, 2012 - Filed January 25, 2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. unknowned
 - ii. _____
 - iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____ N/A
 - (b) _____ N/A
 - (c) _____ N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel,
 - (b) Ineffective assistance of Appellant Counsel,
 - (c) Prosecutorial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) I Randolph Ashford received Ineffective Assistance of Counsel prior and during the trial that's in violation of my right's pursuant to the sixth and fourteenth Amendenth to the U.S const-

(b) I Randolph Ashford received Inefective Assistance of Appellant counsel that's in viol- ation of my right's pursuant to the fifth, Sixth, and Fourteenth, Amendrent to the United -

(c) I Randolph Ashford received Prosecutorial Misconduct during closing argument and or
(See Attachment Of Page-3, 10.(a) (b) (c)

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

(NO).

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(NO).

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/a

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(ATTACHMENT TO PAGE 3 (a) (b) (c)).

(a). itution.

(a). Defense counsel failed to object to the Court Improper jury instruction by the court.

(a). Defense counsel failed to make a through examination of the evidence prior to trial.

(a). Defense counsel failed to impeach any of the State witnesses

(a). Defense counsel failed to pursue obvious leads provided by defendant prior / during the trial.

(b). States Constitution.

(b). Appellate counsel fail to make a sufficient record for review on direct appeal.

(b). Appellate Counsel fail to Present the Solicitor withheld evidence that the defendant requested.

(b). Appellate Counsel fail to obtain the defendant. Rule 5. Motion of Discovery from the Trial Counsel and or the (911) Tape. before file a record to the APPEAL COURT

(c). trial that's in violation of my rights pursuant to the 6th and 14th Amendment of the United States Constitution.

(c). Solicitor withheld evidence, favorable to the defendants defense..

(c). Solicitor vouch for the credibility of the states witnesses.

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea?
- (b) your trial, if any? (Yes)
- (c) your sentencing? (Yes)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
(Yes)
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. DEON O'NEILL, ASSISTANCE PUBLIC Defender / NICOLE

ii. SINGLETARY, ASSISTANCE PUBLIC DEFENDER

iii. ~~Wanda H. Carter~~ WANDA H. CARTER/ APPELLANT DEFENSE

(b) the proceedings at which each such attorney represented you:

i. TRIAL

ii. TRAIL

iii. SCCID DIVISION OF APPELLATE Defense / APPEALS COURT

18. State clearly the relief you seek in filing this application.

New Trial,

19. Are you now under sentence from any other court that you have not challenged?

(NO).

(See ATTACHMENT TO PAGE -(5) Continued Answere
TO 17. (a).).

ATTACHMENT TO PAGE-(5). 17. (a).

17. (a). Nicole Singletary / Deon O'Neil / Assistance Public Defender. 1701 Main Street Columbia S.C. 29202

i Deon O'Neil / Nicole Singletary / Assistance Public Defender
Richland County Public Defender Office 1701 Main Street Columbia,
South Carolina- 29202

iii Wanda H. Carter / Appellant Defense, P.O. box 11589 Columbia,
South Carolina-29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

I, RANDOLPH ASHFORD # 256638, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Randolph Ashford

Sworn to and subscribed before me

This 1 day of Feb, 2012

Debra Jones L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

2012 FEB -6 PM 12:05
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RANDOLPH ASHFORD # 256638, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Randolph Ashford
Applicant

Sworn to and subscribed before me

This 1 day of Feb, 2012

Debra Jones L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

Randolph Ashford #256638
Lee Corr. Inst. F-1-B-#2250
990 Wisacky Highway
Bishopville, South Carolina
29010

April 6, 2015

David E. Belding
Attorney at Law
Post office Box 11964
Columbia, South Carolina
29211

Re: State v. Randolph Ashford, Case NO. 2012-CP-4000-1053

Dear MR. Belding:

It is my understanding of Section v. of the State's return Pg. 6 of 7 in response to my PCR application. to my knowledge the Honorable Judge did not dismiss the ineffective assistance of appellant Counsel, nor the Prosecutorial Misconduct, nor did I waive those claims I raised in my PCR application.

As you may well know in Alice v. State, 409 S.E. 2d at 395 every PCR applicant is entitled to a full adjudication on merits of the application or one full bite of the apple, and I request to pursue those issues I raised in the application.

Please inform the Honorable Judge of my intentions or by COPY of this letter.

Thank You very much.

Sincerely,

Randolph Ashford
Randolph Ashford #256638

cc:

Randolph Ashford #256638
Lee Corr. Inst. F-1-B-#2250
990 wisacky Highway
Bishopville, South Carolina
29010

April 7, 2015

The Honorable Judge
Brooks P. Goldsmith
P. O. Box 895
Edisto Island
South Carolina-29438

Re: PCR application claims and Amendment of application.

Dear Judge Brooks:

Enclosed you will find a courtesy copy of the letter address to attorney, MR. David E. Belding, dated April 6, 2015 and the fact that I've requested my PCR application be amended to include not only indictments. I hope this request are not an inconvenience to your Court. I wish to pursue all possible grounds pursuant to S.C. Civ. P. 15.

With best personal regards, I am.

Case NO. 2012-CP-4000-1053

Respectfully, Submitted

Randolph Ashford
Randolph Ashford #256638

cc: David E. Belding

LEGAL MAIL

